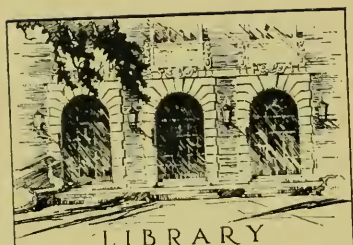

The Church in its Divine Constitution and Office, and in its Relations with the Civil Power.

A CHARGE

DELIVERED TO THE

CLERGY OF THE ARCHDEACONRY OF MAIDSTONE

At the Ordinary Visitation

IN MAY, 1877

WITH NOTES

BY

BENJAMIN HARRISON, M.A.

ARCHDEACON OF MAIDSTONE

RIVINGTONS

WATERLOO PLACE, LONDON

Oxford and Cambridge

CANTERBURY: A. GINDER, ST. GEORGE'S HALL; HAL DRURY, MERCERY LANE;
MAIDSTONE: F. BUNYARD

MDCCCLXXVII

TO THE REVEREND THE

RURAL DEANS AND CLERGY

OF THE

ARCHDEACONRY OF MAIDSTONE;

AND TO

THE CHURCHWARDENS AND SIDESMEN,

This Charge,

PRINTED IN COMPLIANCE WITH WISHES KINDLY EXPRESSED

FOR ITS PUBLICATION,

IS, IN TOKEN OF BROTHERLY ESTEEM AND REGARD,

RESPECTFULLY AND AFFECTIONATELY

Inscribed.

PRECINCTS, CANTERBURY,
MAY XIX, MDCCCLXXVII.

A CHARGE

My Reverend Brethren,

I regard with satisfaction and thankfulness the occasion of meeting you again, assembled, with our lay brethren, the churchwardens of the several parishes, for the purposes of the Ordinary Visitation. And I gladly avail myself of the opportunity, in conformity with established custom, of entering with you on the consideration of some matters which occupy a prominent place in the minds of thoughtful Churchmen, of the clergy and the laity alike, at the present time. The necessary limits within which any address to you on an occasion like this must be compressed, will prevent my doing more than touching briefly on a few salient points; and I am fully conscious how imperfectly it will be done: but my object will be attained, and our limited time here have been turned to account, if any thoughts have been suggested which may, in whatever degree, help

towards arriving at sound and well-weighed conclusions of your own minds, calmly and dispassionately applied to questions of much perplexity, amidst considerable excitement of feeling and anxiety in the minds of men.

The primary subject of inquiry, on these occasions of Visitation, having reference to the condition of the sacred fabrics in which you, my Reverend Brethren, minister, and over which it is the office of the churchwardens to watch, makes it my duty, in the first place, to notice what has been done since we last met in the Visitation of the Archdeaconry, and what works are now in hand. The several undertakings which at our last meeting I enumerated as in progress, have all now been completed, or will all have been completed very shortly; while others which I then reported as designed have been carried into effect; and, still more recently, new works have been set on foot, and are now going forward. Increased and improved Church accommodation, I am happy at the present moment, by a welcome coincidence, to be able to state, has been provided, or is now in hand, in nearly every one of the principal towns of the Archdeaconry. In the centre of the Archdeaconry, the important county town of Maidstone, the spiritual wants of the greatly increased population of the West Borough have been supplied, by the consecration of the new Church of St. Michael and All Angels, with a district to be attached to it and

an endowment obtained; a good work, in regard to which the difficulties which at one time beset it could only have been overcome by a persevering zeal and earnestness which were not to be easily discouraged, and by that Christian munificence which, I should be wanting in grateful acknowledgment if I did not say, the Churchmen of Maidstone uniformly exhibit, when there is a work of charity and piety to be done. I ought also to mention, that in the church of St. Peter's parish, out of which the new district of St. Michael's is taken, and which consists of a poor population, there are rearrangements in hand, which will make the church more fully available for the accommodation of the poor. In connection with these undertakings, I feel bound also to call to mind, that the same day on which the Archbishop laid the memorial stone of St. Michael's Church, he preached at the reopening of Trinity Church, where, with something of a laudable resolution and courage, I must say, a considerable fund had been raised for the internal rearrangement of the church, with greater fitness for the purposes of Divine worship, at the very time when a great effort was making in Maidstone for the building of the new church for the West Borough. I would mention further that essential improvement has been made in the interior of St. Stephen's, Tovil, by the removal of the gallery, and substituting new seats; and there is also a design now in hand to enlarge and

complete St. Philip's Church, by the addition of a chancel and tower, which would greatly improve the church, and be an ornament to the town of Maidstone.

At Tunbridge, with its increasing population, drawn thither by its excellent school, I felt bound, when I last addressed you, to express the opinion, confirmed by a personal inspection of the district, that a crying need existed for a larger supply of the means of grace, pastoral visitation, and the services of the Church, in the northern part of the parish, by the erection of a new church or chapel there; and also in regard to a complete rearrangement and restoration of the parish church, a work which, I could not but feel, ought not to be longer delayed. I had the satisfaction, within a few months afterwards, of being present at the laying of the foundation stone of a new church, St. Saviour's; which was consecrated last summer; built, with an endowment fund also supplied, at the sole cost of the patron, who has since set on foot, by a munificent contribution from himself, the restoration and enlargement of the parish Church of St. Peter and St. Paul. This undertaking, which will involve an outlay of 10,000*l.*, has met with liberal support among the inhabitants of Tunbridge, and also from the Diocesan Church Building Society, and the central Incorporated Society. The design which has been agreed upon, preserving all ancient features worthy of preser-

vation, will sweep away what is out of character and disfiguring; adding a south aisle to the nave, and also to the chancel, and removing the galleries, which are unsuitable to the purposes of Divine worship, and grievously encumber the interior. I heartily rejoice, as every one interested in the welfare of Tunbridge must, at the progress made in these good designs. It cannot be doubted that Tunbridge, situated as it is, and with its richly endowed Grammar School, which admits now, by its new scheme, of enlarged development, will continue to increase in population; and the question has already arisen, whether the daughter parish of St. Stephen's, which, with its church built some twenty years ago, seemed sufficiently to provide for the population which had sprung up near the South Eastern Railway, at the southern end of the town, does not now demand some further provision, by subdivision of the parish, or otherwise, for the spiritual wants of the people. Villas and streets are rapidly rising there, and the parish is of wide extent, including widely scattered cottages. It is a case in which, when the want is felt to exist by persons of different ways of thinking, and schemes have been proposed accordingly to supply it, the required provision will speedily be made. I cannot but hope that, in such like cases, Christian charity, amidst diversities, it may be, of religious opinion, will find, where there is the earnest will, a way to attain—and, if possible,

as is greatly to be desired, by combined action,—an important end in view; that within the circuit of our Jerusalem, wide and large, and yet secure and well guarded, the work of a heavenly Builder, there may be peace within her walls, and at the same time plenteousness within her palaces;[1] "the hungry" filled "with good things," and none "sent empty away."

At Sevenoaks, an internal rearrangement of the parish church has been for some time under consideration, and an influential Committee appointed. It is a fine and spacious fabric, in which much room is lost with square pews, or ill-appropriated in galleries; and a well-considered design of restoration, such as has been already approved, will greatly promote the purposes of Divine worship, at the same time that it will exhibit what has no justice done to it at present, the size of the building and its architectural proportions.

In the parish church of Dartford, the work of refitting the interior, which, as far as the chancel is concerned, was completed some years ago, has now been resumed in regard to the body of the church; reseating the nave, removing galleries, taking away the modern ceiling, and reopening the ancient roof.

Of designs of church enlargement and improvement, of which, when last I addressed you, I spoke

[1] Ps. cxxii. 7.

as more or less matured, I can now report, that a thorough restoration within and without has been completed at Upchurch; the church at Leybourne restored, and the tower rebuilt, at the cost of the late patron; and the addition of a north aisle made to Addington church (Surrey), the space under the tower being thrown into the nave with excellent effect, and new seats throughout. The internal reseating at Cranbrook is, as regards the principal part of the work, now nearly finished; and the work at Rodmersham is begun. The completion of the Church of St. Paul, in Blue Town, Sheerness, by the addition of the south aisle—a work which, I was glad to anticipate, would soon be required by the great success of this new mission and church in a very important place—was successfully carried into effect. In addition to these undertakings, I have now to mention a new church built at Beckenham; great progress made in the new church in course of erection at Bexley Heath; the internal restoration of Hothfield Church, a work which had been long desired, and which was happily accomplished last year; Hunton Church reseated, with the western gallery taken away, and the tower opened to the nave; Boxley Church thoroughly repaired and restored, with costly gifts contributed for its furniture and adornment; and the little church of Bidborough greatly enlarged by the building of a north aisle.

Improvements of various kinds have been made at Loose, in the rebuilt church of Murston, at Speldhurst, at Staplehurst, and elsewhere.

Of works of a like kind, lately taken in hand, in addition to those which I have enumerated in the chief towns of the Archdeaconry, I must specify the addition of a north aisle, with other works, at Erith; and internal rearrangement of seats at Kennington, and also at Headcorn. I would also mention, with special satisfaction, the opening of a temporary church, with the placing of a curate in charge, at the outlying hamlet of Four Elms, in the parish of Hever; to be followed in due time, as is hoped, by the building of a parsonage, the erection of a permanent church, and the formation of a consolidated district to be taken from the parishes of Hever, Brasted, and Chiddingstone; the incumbents of these parishes all now contributing a fixed annual amount to the maintenance of the clergyman. The establishment of mission chapels, or school chapels, in outlying hamlets, or scattered portions of widely extended parishes, such as are some of ours in this Archdeaconry, is an object scarcely less important than the supply of the means of grace to our large towns and densely peopled neighbourhoods.

And now, my Reverend Brethren, I would say that a review like that which I have thought it my duty to take, on an occasion like the present, of the progress making amongst us in the way of

church restoration and improvement, may seem to show that there is a real work everywhere going on, whatever portion of the Church's field we chance to examine in detail. And it is not merely outward and visible work, taken in hand by minds under certain influences, to the neglect of work of another kind, more inward and spiritual: we see in every direction tokens of substantial unity of purpose, amidst whatever variety of personal character and individual opinion. We are reminded constantly that "He which made that which is without" is He who "made that which is within" also;[1] that the pastor who, when put in charge of a parochial cure, is found anxiously exerting himself to bring about a restoration of the church in which he is to minister, is none other than the very person who is most intent on promoting the spiritual welfare of his flock; by bringing all, high and low, rich and poor, young and old together, under the influence of "pure religion and undefiled before God, the Father" of all, to "offer unto the Lord an offering in righteousness," and to hold spiritual communion with Him who "is a Spirit," and to "worship him in spirit and in truth."[2] The extent, moreover, of the work which is thus everywhere going on declares unmistakably, that the impulse, which moves so many hearts and minds at once, must have a higher than a mere

[1] S. Luke xi. 40.

[2] S. James i. 27; Mal. iii. 3; S. John iv. 24.

human or earthly origin; it also bears witness that the Church in our land, not resting simply on her hereditary claims, but anxious to include in her ministrations, and to gather within her walls, all who will accept at her hands such duty and service, preserves, indeed, with religious care, in her sacred fabrics and in her ritual alike, all that is hallowed to the minds of her children by the associations of past times, but is rising also, day by day continually, to a higher and holier sense of what is required of her, if she would stem the tide of evil, maintain the ancient Faith, and the truth of God's holy Word, and labour, so far as in her lies, "warning every man, and teaching every man in all wisdom," to "present every man perfect in Christ Jesus."[1]

We had the advantage last autumn of receiving from our Most Reverend Diocesan, in the second Visitation of his diocese, the expression of his "thoughts"—to quote the title which he has given to the seven addresses delivered to the Clergy and Churchwardens assembled at the several places of Visitation—*Thoughts on the Duties of the Established Church of England, as a National Church.* The Archbishop considered these manifold duties under various aspects, impressing earnestly upon the Clergy and Laity the obligations arising out of them. But, I may say, there remains a question behind, and one which, in these days,

[1] Col. i. 28.

comes prominently to the front; I mean the question, whether there ought to be such a thing at all as an established national Church? It might, indeed, well have been "taken for granted," to use his Grace's words, "that there is no one in England who holds so lightly by the principles of the Reformation, unless he be a Roman Catholic, as to contend that there is anything unscriptural in the idea of a national Church. A national Church?" said the Archbishop, "what does the phrase mean? Wherever the State, feeling its Christian responsibilities, provides that in any way the ministrations of religion shall be secured to all its people, there is a national Church." But there has been of late years such a drifting away from these "principles of the Reformation" on the part of those who, it might have been supposed, would be the most jealous in maintaining them, that the maxims of religious men in the age of the Reformation and in the days of the Commonwealth are flung to the winds; and it is in nowise recognised as the duty of a Government to make provision of any sort for the spiritual welfare of the people. Religion, we are told, is a matter between God and a man's own conscience; and the State cannot meddle in any way with it without corrupting the purity of religion, abusing the functions of government, and interfering with the rights of conscience and the claims of "civil and religious liberty."

That religion is indeed a sacred matter of in-

dividual, personal concern, that "every one of us shall give account of himself to God,"[1] is an indisputable truth; and one which will never be forgotten by those whose responsible duty it is to minister to souls. "Thou, when thou prayest,"—it is a point of the Divine teaching enshrined in the Sermon on the Mount—"enter into thy closet, and when thou hast shut thy door, pray to thy Father which is in secret."[2] But this precept does not exhaust the whole of Christ's doctrine, or the entire religion of the Gospel. The Sermon on the Mount had opened with the blessing promised of the inheritance of "the kingdom of heaven;"[3] that "kingdom of heaven" which had been declared by Christ's forerunner, and then by Himself, to be "at hand:"[4] for now "the time" was "fulfilled," and "the kingdom of God," as it is elsewhere called,[5] was to be revealed amongst men. And our Blessed Lord went on to say to His disciples, in the same Divine discourse, "Ye are *the light of the world. A city that is set on an hill cannot be hid.*"[6] "The kingdom of heaven,"[7] —its principles, its laws,[8] its "mysteries,"[9] its destined progress,[10] ordained as it was to leaven the

[1] Rom. xiv. 12. [2] S. Matt. vi. 6.

[3] "And seeing the multitudes, he went up into a mountain: and when he was set, his disciples came unto him: and he opened his mouth, and taught them, saying, Blessed are the poor in spirit: for their's is *the kingdom of heaven*."—S. Matt. v. 1–3; comp. ver. 10.

[4] Comp. S. Matt. iii. 2; and iv. 17. [5] S. Mark i. 15.

[6] S. Matt. v. 14. [7] Ib. x. 7; xi. 11, 12; xii. 28. [8] Ib. v. 19, 20.

[9] Ibid. xiii. 11 (comp. ver. 19, "the word of *the kingdom*").

[10] Ibid. xiii. 24–30.

whole mass of human society,[1] and to be a tree overshadowing the nations and kingdoms of men,[2] this is the subject, in our Divine Redeemer's teaching of sermon and parable,[3] "public instruction and private interpretation" to His chosen disciples,—this is the very characteristic and key-note, so to speak, of the first Gospel. It is, manifestly, an outward visible society which He designed to plant in the earth: there was a "confession" of faith to be made "with the mouth," as well as a belief entertained in "the heart" of the faithful disciple;[4]—St. Peter's confession, "Thou art Christ, the Son of the living God;"—"and upon this rock," said He, the eternal Son of the Father, "I will build my Church; and the gates of hell shall not prevail against it."[5] There was a household[6] and a kingdom[7] to be formed, and "keys"[8] of its heavenly treasure to be held. There was to be a holy "congregation," as of Israel in the elder time, an *ecclesia* (ἐκκλησία), a body which was to take cognisance of controversies and offences as between brethren: "and if he will not hear them,"—the two or three, in whose mouth, as by the Mosaic ordinance,[9] every word should be established,—"tell it unto *the Church*," said our Blessed

[1] S. Matt. xiii. 33. [2] Ibid. xiii. 31; comp. verses 44, 45, 47.
[3] Chap. xiii.; xviii. 23; xx. 1; xxii. 2; xxv. 1.
[4] Rom. x. 9, 10. [5] S. Matt. xvi. 16, 18. [6] Ibid. xiii. 27, 52.
[7] The "kingdom" of "the Son of man" (S. Matt. xiii. 41), "the kingdom of their Father." [8] S. Matt. xvi. 19.
[9] Comp. Num. xxxv. 30; Deut. xvii. 6; xix. 15.

Lord; "and if he refuse to hear *the Church*, let him be to thee as an heathen man and a publican,"[1] an outcast, in like manner as one cut off from "the commonwealth of Israel" under the law of Moses; there was to be the authoritative sentence of men divinely commissioned: "Verily I say unto you, Whatsoever ye shall bind on earth shall be bound in heaven: and whatsoever ye shall loose on earth shall be loosed in heaven."[2] And indeed it was for asserting, in answer to the solemn adjuration of the High Priest, His claim to a heavenly kingdom, that our Divine Redeemer was condemned to death by the Jews. "Hereafter," said He, "shall ye see the Son of Man sitting on the right hand of power, and coming in the clouds of heaven."[3] He claimed thereby unmistakably to be none other than He whom Daniel had seen "in the night visions," when other great kingdoms of the earth had passed away; "one like the Son of Man," who "came with the clouds of heaven, and came to the Ancient of days, and they brought him near before him. And there was given him dominion, and glory, and a kingdom, that all people, nations, and languages, should serve him: his dominion is an everlasting dominion, which shall not pass away, and his kingdom that which shall not be destroyed."[4]

But if we would clearly understand and discern

[1] S. Matt. xviii. 17.
[2] Ibid. ver. 18.
[3] Ibid. xxvi. 64.
[4] Daniel vii. 13, 14.

how this kingdom, reserved for the "Son of Man," this "kingdom of heaven," was distinguished from the kingdoms of earthly potentates, we must follow the Divine Sufferer, from the High Priest's palace and the hall of the Sanhedrin,[1] to the judgment seat of the Roman governor. It was on a charge of blasphemy, an offence against the Jewish law, that He had been condemned by the council and the whole senate of the children of Israel,[2] "because he made himself the Son of God."[3] But when, forthwith, "the whole multitude of them arose, and led him unto Pilate," there was at once a change of front in their tactics and policy; they had "found" Him, they said, "perverting the nation, and forbidding to give tribute to Cæsar, saying that he himself is Christ a King."[4] How entirely the reverse of the truth was this accusation we know full well; for He had bidden them in fact to give tribute to Cæsar of what was Cæsar's own:[5] but that He *was* a king, and the King of the Jews, He freely admitted the charge; "Thou sayest it."[6] And Pilate as freely declared at once his conviction of His innocence. He said to the chief priests and to the people, "I find no fault in this man."[7] In the meek sufferer

[1] S. Matt. xxvi. 57–68, and xxvii. 1.; compare S. Luke xxii. 54, and 66–71. [2] Compare Acts iv. 5, 6–15, and v. 21.
[3] S. John xix. 7. [4] S. Luke xxiii. 1, 2.
[5] S. Matt. xxii. 21; S. Mark xii. 17; S. Luke xx. 25.
[6] S. Matt. xxvii. 11; S. Luke xxiii. 3.
[7] S. Luke xxiii. 4; compare xxiii. 14, 15.

that stood before him the Roman governor discerned clearly, that here was no ringleader of sedition and rebellion, like that other "notable prisoner" whom they then had;[1] or those others, fellow-countrymen with this man (for notoriously He "was of Galilee"), those ill-fated Galileans "whose blood Pilate had mingled with their sacrifices;"[2] or, again, the noted Theudas, or Judas of Galilee, who "rose up in the days of the taxing, and drew away much people after him."[3]

But the words which passed further between the Divine prisoner and His judge, when His accusers pointed thus, and pressed relentlessly, the charge that He was "a malefactor," or they "would not have delivered him up" to Pilate,[4] the discourse which was held with the perplexed and awe-struck governor by Him who stood at his bar, is worthy of attentive consideration, as giving the sacred clue to the mystery of the kingdom which was to be in the world, but not of the world; not a rival of which the kings and governors of this world needed to be jealous, though it were indeed one of which they were to stand in awe[5] by reason of its heavenly character, its spiritual sanctions, its destined course of victory,

[1] S. Matt. xxvii. 16. Compare S. Mark xv. 7: "One named Barabbas, which lay bound with them that had made insurrection with him, who had committed murder in the insurrection." S. Luke xxiii. 19: "Who for a certain sedition made in the city, and for murder, was cast into prison."

[2] S. Luke xiii. 1. [3] Acts v. 36, 37. [4] S. John xviii. 30.

[5] Psalm ii. 10–12.

and final triumph through patient suffering. "Art thou the King of the Jews?" the question was asked again in undisguised anxiety.[1] The counter-question put to Pilate, discovering the inner springs of malice and envy which were at work, touched the very centre of the mystery involved: "Sayest thou this thing of thyself, or did others tell it thee of me?"[2] The governor knew well that it was no rebellion against Cæsar that was concerned, no crime against temporal law that had been committed. "Pilate answered, Am I a Jew? Thine own nation and the chief priests have delivered thee unto me: what hast thou done?" "Jesus answered, My kingdom is not of this world: if my kingdom were of this world, then would my servants have fought, that I should not be delivered to the Jews: but now is my kingdom not from hence." Here was the distinctive mark: His kingdom possessed not, it claimed not, the temporal sword; "twelve legions of angels," as Christ Himself had reminded His zealous Apostle, when he drew the sword in His behalf, might presently, at one word of His of prayer to His Father, have been seen ranged on His side;[3] but Cæsar's legions, and Pilate's guard, had not been called upon, nor would they be, in His case. But it was none the less truly, meanwhile, a kingdom that He claimed as His own. "Pilate

[1] S. John xviii. 33. [2] S. John xviii. 34.
[3] S. Matt. xxvi. 53; compare Daniel vii. 10.

therefore said unto him, Art thou a king then? Jesus answered, Thou sayest that I am a king." He would not, were it to save His earthly life, compromise that rightful claim. "To this end was I born, and for this cause came I into the world, that I should bear witness unto the truth. Every one that is of the truth heareth my voice."[1]

But we must revert for a moment to that dark scene in the garden where Christ fell into the hands of His enemies, and to the mysterious words, full of meaning and full of parable, which He had spoken to His disciples on that solemn evening. In the upper chamber, when He had eaten with them His last supper, and was now ready to go forth to His betrayal, He revealed to them that a time was coming upon them, unlike that in which they had once been sent forth by Him "without purse, and scrip, and shoes," and yet had not lacked anything. "But now," said He unto them, "he that hath a purse, let him take it, and likewise his scrip: and he that hath no sword, let him sell his garment, and buy one. . . . And they said, Lord, behold, here are two swords. And he said unto them, It is enough."[2] Taking literally their Master's words, and not entering into the spirit of them, the zealous disciple and his brother Apostles not unnaturally, we may say, asked the question, when the soldiers and officers had surrounded Him, "Lord, shall we smite with

[1] S. John xviii. 35–37. [2] S. Luke xxii. 35–38.

the sword?"[1] It was assuredly not without a deep meaning that He, who had before spoken so mysteriously to the disciples, now, in His words of rebuke to Peter, corrected the earthly mind which would mistake the weapons of Christ's warfare, and fail to distinguish between the outward force and violence of "the kings of the Gentiles," their so-called "benefactors," and, on the other side, the spiritual powers which He had shadowed out, when He said to the disciples gathered around Him at His supper, "I appoint unto you a kingdom, as my Father hath appointed unto me; that ye may eat and drink at my table in my kingdom, and sit on thrones judging the twelve tribes of Israel."[2]

The conflict which began on that awful night, the "hour of" the Evil one, "and the power of darkness,"[3] went on to the predestined victory. "And now began to work the greatest glory of the Divine providence: here was the case of Christianity at stake"—I am quoting the description given by an eloquent bishop of our Church, though, necessarily, I quote it briefly.—"The world," says Jeremy Taylor, "was rich and prosperous; . . . the devil's city was full of pleasure, triumphs, victories, and cruelty; good news and great wealth; conquests over kings, and making nations tributary; they 'bound kings

[1] S. Luke xxii. 49. [2] Ibid. verses 25–30.
[3] Ibid. verse 53.

in chains, and nobles with links of iron;' and the inheritance of the earth was theirs. The Romans were lords over the greatest part of the world; . . . and all the power of the Roman greatness was a professed enemy to Christianity. And on the other side, God was to build up Jerusalem, and the kingdom of the Gospel. . . . On the one side there was the offence of the Cross; on the other, the patience of the saints: and what was the event? They that had overcome the world could not strangle Christianity. But so have I seen the sun with a little ray of distant light challenge all the power of darkness; and, without violence and noise, climbing up the hill, hath made night so retire, that its memory was lost in the joys and spritefulness of the morning. And Christianity, without violence or armies, without resistance and self-preservation, without strength or human eloquence, without challenging of privileges or fighting against tyranny, without alteration of government and scandal of princes, with its humility and meekness, with toleration and patience, with obedience and charity, with praying and dying, did insensibly turn the world into Christian, and persecution into victory."[1]

If now, my Reverend Brethren, we have rightly drawn from the fountains of eternal truth, revealed

[1] Bp. Taylor's Sermon, "The Faith and Patience of the Saints, or the Righteous Cause Oppressed." *Works*, ed. Heber, vol. v. pp. 532, 533.

in the words of teaching, and the acts of suffering, of Him who was Himself the Divine Founder of His Church, we shall see how utterly at variance with it all are the views of those who would make religion to be a mere matter of private opinion, in the individual exercise of personal liberty, and the State, on the other hand, a purely secular thing, with which religion has nothing to do. Our Blessed Redeemer, it would appear, "when the fulness of the time was come," and "the kingdom of heaven," foretold and foreshadowed through the ages long before, was to be unfolded, planted in the mount Sion, thence to spread into all lands, a visible Church, duly commissioned His appointed ministers, gave it its laws of sacred discipline, its privileges of brotherly fellowship, outward and visible signs and instruments of incorporation into this spiritual society, mystic communion with Himself unseen in ordinances of His own appointment, through the gracious influences and agency of His Spirit; and promised His presence with it alway, even unto the end of the world. He warned His Church, meanwhile, by the awful lesson of His own sufferings at the hands of those who sat in Moses' seat, against putting that which was, in their view, "expedient for" them,[1] in the place of law and right, and delivering over to the powers of this world the exercise, in spiritual matters, of judgment which

[1] S. John xi. 50.

ought to have been kept free from the policy or the tyranny of "the Gentiles." On the other hand, in the subjection of His human nature to the authority of temporal law, He humbly recognised it as a power (for so He spake of it to Pilate, as a power), a "power" that was "given from above;"[1] He religiously reserved to it, to its ministers and officers, that which He denied to His Church, the wielding of the temporal sword; and explicitly condemned the spirit which, under the plea of religious duty, or scruple of conscience, would have claimed to set aside the lawful rights of Cæsar, due to him from those whom God's overruling providence had brought under his imperial sway.

And when, from meditating on the oracles and ordinances of our Saviour Christ, we pass on to trace the accomplishment, in the world's history, of that which the Spirit of prophecy had shadowed out long before, we find how unlike was the actual event to that which in these days seems very commonly to be assumed as what really happened. From the way in which men are apt to speak, in expounding popular theories, it would be supposed that at some stage,—originally, I presume, when human beings had fully developed themselves out of inferior orders of creation into a higher grade, and had reached that latest phase of existence at which, we are told, the religious idea puts itself

[1] S. John xix. 11.

forth,—the civil government chose, out of divers theological systems, one which it preferred, endowed it with special privileges and possessions, and made it a religious establishment. The form of religious opinion thus preferred, it is supposed, in consideration of its civil advantages, parted with something of its natural liberty and authority; and thus was formed a sort of alliance of the Church with the State. Never was a more unsubstantial and baseless hypothesis framed by pure imagination. It is a theory contrary to historic fact, utterly unworthy of either of the supposed contracting parties, dishonourable and degrading to both; and one which, if a time comes, in the progress of things, when civil governments are disposed to throw off religious obligations, or to tyrannise over religious convictions, tempts religiously-minded men, on the other side, to fall in with the cry for what we have heard so much of, of late, "disestablishment and disendowment;" as if these were to accomplish "the liberation of religion" (the professed object of those who, meanwhile, are avowedly the Church's bitterest enemies) "from State patronage and State control." The truth is, that relations between the Church and the State grew up naturally, and as a matter, indeed, of obvious necessity, as soon as the rulers of this world were brought to confess the faith of Christ, and to own His supreme dominion. Especially was this the case when the throne of earthly power

was one like that of Rome, a city which, from the days of its earliest history, had been built up under the immediate sanction of religion, the rites and ceremonies of which were wrought into every portion of its system, every act of its daily life. The infidel historian of Rome's decline and fall has himself told us, that "a candid but rational inquiry into the progress and establishment of Christianity may be considered as a very essential part of the history of the Roman Empire. While that great body," he says, "was invaded by open violence, or undermined by slow decay, a pure and humble religion gently insinuated itself into the minds of men, grew up in silence and obscurity, derived new vigour from opposition, and finally erected the triumphant banner of the Cross on the ruins of the Capitol."[1] A Christian emperor could not, consistently with the dictates of conscience, go on bowing in the idol's temple, like Naaman's Syrian master in the house of Rimmon, and compelling those on whose hand he leaned to do the same.[2] And Christian legislation would irresistibly follow upon the fact, already dwelt upon, that Christianity was not a mere matter of private opinion, a philosophy which might be cherished in secret, while its disciple conformed outwardly to the national religion which, all the time, he despised, and even

[1] GIBBON'S *Decline and Fall of the Roman Empire*, vol. ii. chap. xv. p. 265 (ed. 8vo).

[2] 2 Kings v. 18.

in his last moments, it might be, would sacrifice a cock to Æsculapius.[1]

Let me illustrate, by a single example, the way in which Christian legislation would come in, and Christianity become at once, and unavoidably, "part and parcel," to use a legal phrase, "of the law of the land." One of the first instances of such legislation, in the interests of Christianity, was in regard to the observance of the Lord's Day. I need not specify, in detail, the provisions which were enacted in the days of the first Christian emperor; I would simply remark, that the necessity for such enactments arose out of the primary institutions of the Church of Christ.[2] His followers were wont to keep, with religious observance, their weekly festival in honour of His resurrection; and obviously, they could not keep it consistently or effectually, if the courts of law were open, as on other days, and men compelled to attend them, and the Roman world were holding on its course of business and pleasure, with all their unsparing requirements, on that sacred day. And let me remark, since this is a point in regard to which questions of the present time may throw light upon, or borrow light from, the past, it was not that the Church desired to take up the

[1] *Platonis Phædo.* § 155: "καὶ ἐκκαλυψάμενος, ἐνεκεκάλυπτο γάρ, εἶπεν, ὃ δη τελευταῖον ἐφθέγξατο, Ὦ Κρίτων, ἔφη, τῷ Ἀσκληπιῷ ὀφείλομεν ἀλεκτρυόνα· ἀλλ' ἀπόδοτε καὶ μὴ ἀμελήσήτε."—Opp. ed. Bekker, tom. v. pp. 409, 410.

[2] BINGHAM'S *Christian Antiquities*, book xx. ch. 2.

weapons of persecution which had been wrested out of the hands of the pagan State; it was not that Christians thought "to make men religious," as the phrase now-a-days is, "by Act of Parliament." There was no confusion between the duties of the civil power and of the ecclesiastical; it was not with a direct view to the salvation of souls, —the Church's end and aim,—but for the welfare of the community, the protection of the interests of all, maintenance, really, of the rights of conscience, and above all, a supreme regard for HIS honour by whose authority Cæsar reigned, wielding the temporal sovereignty, and, as a Christian king, so far as his office extended in this behalf, watching over the Church.

It may further be observed, that there was no disposition, on the part of the Church of those days, to barter away her spiritual inheritance in exchange for temporal privileges. There was, in fact, a great impulse not to take possession of cities and enjoy the world, but on the contrary, to flee into the wilderness; *there* would St. Athanasius be found, from time to time, in the deserts of Egypt, and St. Jerome in his retirement at Bethlehem. The Church had her trials in that age, as well as in every other of her eventful life, a stranger and a pilgrim still, and "militant here in earth;" but she did not throw away or forfeit any portion of her sacred deposit when the empire became Christian. Constantine, no doubt, had it been left to

him to determine Church controversies, would himself have treated the question between the Arians and the Church Catholic as one in regard to which Christians need not quarrel;[1] but, duly recognising the true relations between the Church and the empire, he declared himself to be simply an *episcopos*, an overseer, in external matters of the Church, while her bishops had authority in matters of faith and spiritual cognisance.[2] And it is worthy, above all, to be borne in mind, that the age of the Christian emperors was that which enabled the Catholic Church in all lands to assemble, under the sanction and protection of the imperial authority, and to enshrine in the confessions and acts of the first four Councils the pure Faith, in its integrity and fulness,[3] the cardinal doctrine of the Incarnation, the union of the two Natures in one Person, of the Eternal Ever-blessed Son.[4] The fact of the State becoming Christian did not involve a compromise of heavenly truth, in exchange for worldly privilege or power: on the contrary, it gave liberty to the Church securely to meet, under the protection of the civil power, to bear her solemn witness to the Faith, and, with the voice of united Christendom, with authority derived from on high, to "tell it out among the heathen that the Lord is King."[5]

Thus much concerning the *doctrine* of the Church,

[1] Euseb. *De Vitâ Constantini*, ii. 63; Socr. i. 7; Soz. i. 16.
[2] Euseb. Ibid. iv. 24.
[3] See Note A.
[4] Ibid.
[5] Psalm xcvi. 10, Prayer Book.

in relation to the temporal power of Christian kings and governors. And in regard to its *discipline*, also, Christian antiquity throws light upon questions which have arisen among us in these latter days. If, in any matter involving discipline, and possibly doctrine with it, the Church at any time should seem to be hampered, in her judicial action, by her relations with the civil power, the instinctive feeling of religious-minded men, as before said, is to renounce privileges and surrender endowments, if the possession of them endangers the maintenance of Christian truth. But it has been often clearly pointed out, that it is not an established Church alone which is, by reason of its position as such, exposed to interference of the State: the possession of any endowment whatever, by any religious body, renders it liable, if a question of discipline arise within it, and difference of opinion occur among its members, to have its system of doctrine and discipline brought before the civil courts, and decisions touching its confessions and formularies pronounced there. "Then let all endowments go," men may say; and it seems a noble and self-sacrificing thing to say: and, doubtless, it is perfectly competent for men, and their duty, individually, if there is a question of personal conscience involved, to resign that which they cannot consistently hold. It is not so clear that they have the right peremptorily and hastily to determine the case in the behalf of the Church,

to anticipate her judgment as to what the matter of complaint really is, and in what way a remedy should be sought. The privileges and the inheritance of the Church are not theirs at once to give away, cutting off, on the strength of their own private judgment, the entail in which future generations are concerned.

But suppose the endowments cast away; there is the question of the fabrics still to be dealt with. It was a case of this kind which occasioned the first appeal, in the history of the Church, to the civil power while it was still heathen. The bishop of the great city where "the disciples were called Christians first,"[1] of Antioch, had been deposed by his brother bishops for denying the Faith concerning the Divinity of our Blessed Lord; and a successor, sound in the faith, had been appointed to his bishopric. But Paul of Samosata refused to give up the Church, with the buildings belonging to it, in which he ministered; and the spiritual body had no power to enforce the sentence. On the principles of Christ's Church, they had no coercive force; it was not for them to constitute a band of men and officers, and break open the sacred building with axes and hammers. An appeal was made accordingly to the temporal power; and the Emperor Aurelian, himself a heathen, had to decide it. He was not qualified personally to judge of such matters; but he took the course which a

[1] Acts xi. 26.

sense of justice and practical wisdom suggested: he referred the matter to the Christian bishops of Italy, men removed from the scene of conflict, and competent to report upon it, with full knowledge of the Church's doctrine and discipline, and to declare which was the lawful bishop. They pronounced that Paul of Samosata did not hold the Christian Faith, and that they did not hold communion with him: and the civil power gave effect to the decision of the bishops of Asia, and ejected him from his Church, and from the house of his see.[1]

Of course, what was said of endowments may be said in like manner of the fabrics in which we minister; if we cannot hold them without surrender of truth, let us give them up also. We should be exhorted, doubtless, to choose rather the worship by the river's side where the Apostle spake to Lydia and the women which resorted thither;—though that, indeed, would rather appear to have been a gathering together in a recognised place of public worship, a *proseucha*, "where prayer was wont to be made;"[2]—we might say, We will hold our religious assemblies under the canopy of heaven, in the market-place, or in the streets. But even there the guardians of the public peace will break up our assembly, and command our congregation to pass on their way. It is, in fact, impossible for the minister of religion, while

[1] Euseb. *H. E.* vii. 30. [2] Acts xvi. 13. See Note B.

he ministers on the earth, to escape out of the reach of the civil power; and for this simple reason, "for they are GOD'S ministers, attending continually upon this very thing."[1] "The powers that be are ordained of God;"[2] to them is committed the care of the public peace, and the orderly maintenance of the framework of civil society. He who is the Prince of the Catholic Church is also "the Head of all principality and power," and "the Prince of the kings of the earth;"[3] and they, knowing whose ministers they are, and duly considering whose authority they have, have this for their appointed duty, to "study to keep" HIS "people committed to their charge in wealth, peace, and godliness."

It has already been said, that where any temporal endowment or possession is concerned, if a controversy arise in any religious community, the matter must necessarily, in the last resort, come for final decision to the temporal power. Only in the case of the Church, as recognised and established by the constitution of the realm, there is this essential difference; that whereas, in regard to other religious bodies the only legal tribunal that can deal with matters in dispute is the State court, the Church has its own courts of judicature, acknowledged and protected by the State, in which these questions may be determined; only if the contending parties within the Church cannot

[1] Rom. xiii. 6. [2] Rom. xiii. 1. [3] Col. ii. 10; Rev. i. 5.

close the controversy, the cause must come, by appeal, to the Crown, the highest source of justice when the rights of subjects are concerned. So it was among the Jews under the dominion of Rome. There was "the judgment" and "the council;"[1] and if there was a charge of an offence touching their religion, they might take the accused, as the Roman governor told them, "and judge him according to" their "law."[2] And so it has been in this Church and realm of England. All through the conflicts of the last eight hundred years, in the Constitutions of Clarendon, alike, in the days of the second Henry, and in the reformation of her spiritual polity under Henry the Eighth, the order of her ecclesiastical courts has been duly recognised in their regular subordination to each other; with this only question disturbing the system, the question whether the king should take order for the determination of causes finally within the realm, or whether they should be carried by appeal to the Court of Rome.[3]

And here came in, in the crisis of the separation from Rome, in the reign of Henry VIII., the statute of the realm, which has fitly been designated commonly as "the great Statute of Appeals."[4] It

[1] S. Matt. v. 22.

[2] S. John xviii. 31. Compare Acts xxiv. 5, 6: "For we have found this man a pestilent fellow, and a mover of *sedition* among all the Jews throughout the world: . . . who *also* hath gone about to *profane the temple:* whom *we* took, and *would have judged according to our law.*" See Note C.

[3] See Note D.

[4] 24 Henry VIII. cap. 12.

was no ordinary act of legislation; it was an able and masterly State paper; it is, in fact, the great charter of the liberties of the reformed Church of England, freed from the uncatholic, oppressive dominion of the Pope and Bishop of Rome. It laid down the lines of the constitution of England, and also recorded its history; "Where by sundry old and authentic histories and chronicles"—so ran the wording of this remarkable Act—"it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king, having the dignity and royal estate of the imperial crown of the same; unto whom a body politick, compact of all sorts and degrees of people, divided in terms and by names of spiritualty and temporalty, been bounden and owen to bear, next to God, a natural and humble obedience; he being also institute and furnished, by the goodness and sufferance of Almighty God, with plenary, whole, and entire power, pre-eminence, authority, prerogative, and jurisdiction, to render and yield justice and final determination to all manner of folk, resiants or subjects within this his realm, in all causes, matters, debates, and contentions, happening to occur, insurge, or begin within the limits thereof, without restraint or provocation to any foreign princes or potentates of the world." Concerning "the body spiritual whereof" the Act goes on distinctly to declare, that "when any

cause of the law divine happened to come in question, or of spiritual learning, then it was declared, interpreted, and shewed by that part of the body politick called the spiritualty, now being usually called the English Church, which always hath been reputed, and also of that sort, that both for knowledge, integrity, and sufficiency of number, it hath been always thought, and is also at this hour, sufficient and meet of itself, without the intermeddling of any exterior person or persons, to declare and determine all such doubts, and to administer all such offices and duties, as to their rooms spiritual doth appertain." "For the due administration whereof," the Act goes on to state, "and to keep them from corruption and sinister affection, the king's most noble progenitors, and the antecessors of the nobles of this realm, have sufficiently endowed the said Church both with honour and possessions." The Act then proceeds to speak of "the laws temporal, for trial of property of lands and goods, and for the conservation of the people of this land in unity and peace, without rapine or spoil; which law temporal," it is declared, "was and yet is administered, adjudged, and executed by sundry judges and ministers of the other part of the said body politick, called the temporalty; and both their authorities and jurisdictions," as is finally explained, "do conjoin together in the due administration of justice, the one to help the other."

Thus did the whole nation of England, represented by the king, the lords spiritual and temporal, with the commons of the realm in Parliament assembled, lay deep and broad—or, rather, thus did they exhibit to view, as laid, by former generations, deep and broad—the foundations of the entire fabric of the constitution in spiritual matters and temporal, in Church and State; conjoined together in a union which duly recognised the functions and rights of each, not compromised or bartered away, but duly preserved and honoured. I am well aware that some persons, looking with legal eyes at this Act and that which followed it in the next year,[1] have maintained that this preamble did not apply to the later Act, and that this earlier Act had only a temporary and partial character. But I must humbly submit that it is impossible, on a large view of the history of those times, and the great rupture with Rome of which this Act laid the strong and stable grounds, so to narrow or nullify its well-considered and weighty language. And it is further to be observed, that the provisions made in the later Act for completing the action of the former, the arrangements for the appeal to the king in Chancery, and, further, those which were contained in the subsequent recommendations of commissioners for the reformation of the ecclesiastical laws, appointed under the provisions of that Act, are perfectly reconcilable, and in full

[1] 25 Henry VIII. cap. 21.

harmony, with the cardinal principles laid down in "the great Statute of Appeals."[1]

If, therefore, any difficulties have arisen in the body politic, and in the mutual relations of Church and State, we have, I think, only to fall back upon the declared principles of the English Reformation, embodying the history and law of yet older days. It is for us calmly to inquire, as a Church and nation, whether, and how far, we have drifted unawares, in recent times, from our ancient moorings; and how best, under present circumstances, with the lights of our own Constitution, of truth and reason, of history and Scripture, to recover our true position, and for the future to steer a safe and and right course.[2] It would be a more difficult matter, if the legislation of Henry the Eighth's reign had been, as it might well have been supposed it would be, an arbitrary setting up of a new temporal Pope in place of him of Rome, overriding and confounding, with Tudor prerogative, all rights and claims standing in his way. Instead of this, we have a platform of civil and ecclesiastical polity, recognising freely and fully the rights and duties of all, in a spirit not unworthy of the presumed wisdom of a later age. It may be observed also, that it traces to its true source Church endowment, as well as Church establishment, as originating not in any act of the State, but in the free gifts of kings and nobles.

[1] See Note E. [2] See Note F.

In regard to the most recent act of legislation affecting the Church in judicial matters, I took occasion, when I addressed you three years ago, to express satisfaction that, whereas the appeal had been given, in the Act of the previous session, to a new Supreme Court of Judicature, provision had been made that, as there would be no longer ecclesiastics sitting in the Court, combined with lay judges, there should be episcopal assessors appointed, to inform the Court on spiritual questions. It appeared to me that the principles of right reason and of the Church of Christ required this.[1] The new Act, however, before it had been supplemented, as was requisite, by other arrangements, was set aside; and ecclesiastical questions were referred, as they had been before, to the Judicial Committee of the Privy Council. Provision has been made at the same time for a new arrangement, whereby a body of episcopal assessors, appointed in a certain rotation, shall always be present, to inform and advise the Judicial Committee when spiritual causes are before it. A right principle being here recognised, I think it will be our wisdom to watch matters patiently and considerately at the present time, in regard to the satisfactory working of the new provisions.

With reference to another point, the mode of appointment of the newly created Provincial Judge,

[1] Charge delivered to the Clergy of the Archdeaconry of Maidstone, in April 1874, pp. 24–26.

who has succeeded to the office of Dean of the Arches of the Province of Canterbury, and to the corresponding office in the Province of York, I may observe that some of the provisions have regard to this first appointment simply; and that there is nothing, as I understand, to prevent a successor being appointed, with powers conveyed directly, as in former instances, by the spiritual authority of the Archbishop. At the same time, I should not deal faithfully with the opinion which I have been compelled to form, if I did not venture to express my regret, that it has appeared to legal minds necessary that the new Provincial Judge should be invested with all the powers of the civil judges; and, in order thereto, that he must be appointed with the sanction of the Crown. And further, in case of difficulty in regard to a concurrent appointment by the two Primates—a case not impossible, or it would not have been expressly provided for—the entire appointment is given over to the Crown; a provision which seems at variance with the principles of our ecclesiastical system, which, up to the last resort, would make the judge of the ecclesiastical court the direct representative and commissary of the Bishop or Archbishop. In the contingency thus provided for in the Act, we might see the whole ritual of the Church of England, in both provinces, dealt with by a single lay judge, deriving his authority in no degree from a spiritual source; with

no knowledge or experience, possibly, of ecclesiastical law, or the practice of the ecclesiastical courts; and with no other qualification required by the Act, than that he should be a barrister of ten years' standing, or one who had been a judge in one of the superior courts of law.

In the view of the difficulties with which these questions are beset, let me the rather say, in conclusion, my Reverend Brethren, that it is, I think you will agree with me, fervently to be desired, that the Public Worship Regulation Act of 1874 may, by the general consent of Churchmen, become, as it may by such consent become, a dead letter. The bishop, as you are aware, may quash the whole proceedings at the outset, stating his reason; and in any case, if both parties are willing to submit to the directions of the bishop without appeal, there the complaint must end. It is further "provided," at the same time, "that no judgment so pronounced by the bishop shall be considered as finally deciding any question of law so that it may not be raised again by other parties;" hereby avoiding the evil and danger which attends carrying questions of ritual into the final court, that thereby the whole Church is affected, the entire body of its Clergy and Laity, by any decision pronounced. Better still, if the clergyman, irrespectively of the Public Worship Regulation Act and its provisions, were to act upon the requirements of the Preface to the Book of Com-

mon Prayer, in regard to the reference of doubtful or disputed points to the bishop; protected as the party concerned is by the proviso there laid down, that any order which the bishop may take must "not be contrary to any thing contained in this book." Of course, this requires that the other party shall equally submit himself to the judgment of the bishop: and it is not an extravagantly unreasonable presumption, that the layman be found as willing as the clergyman, in difficult matters of spiritual learning, to act on the supposition that he is not absolutely infallible, and may by possibility be wrong.

"Disestablishment and disendowment" are, I am convinced, far from us, my Reverend Brethren, with all their attendant evils and dangers to this nation,—and, I am persuaded also, to this Church,—if only we escape the snare and the sin of disunion among ourselves; and none of us, of the Clergy or the Laity, in an impatience which cannot wait on God's good providence, think to gain something by an alliance with those whose aim and end is avowedly the secularisation of things which belong to God and to His Christ, the heritage of His Church and of His poor; dethroning Christ, so far as in them lies, from His royalty over the kingdoms of the world, and robbing Him of the gifts which, according to the word of prophets and psalmists, "the kings of Tarshish and of the isles" have humbly cast at His feet; kings falling down

before Him, and nations doing Him service.[1] And if it be in the later days of His Church that our lot is cast, amidst whatever new relations of the civil and the ecclesiastical State, under whatever empire of the world, we are called,—like them of Judah of old, with "the prince of the captivity" of David's house, and the successor of Aaron's line, under new kingdoms of the Eastern world, or amidst the conflicts of the kings "of the north" and "of the south,"—to restore the house of our God, and rebuild the walls of our Jerusalem, the voice may still come in audible tones to us, as it came to them, "of the Lord's messenger in the Lord's message unto the people:" "Yet now be strong, O Zerubbabel, saith the Lord; and be strong, O Joshua, son of Josedech, the high priest; and be strong, all ye people of the land, and work: for I am with you, saith the Lord of hosts: according to the word that I covenanted with you when ye came out of Egypt, so my spirit remaineth among you: fear ye not."[2] "Lo, I am with you alway"—it was the last word and promise of HIM who came to that second temple, and filled it with glory, "the Desire of all nations"—"Lo, I am with you alway, even unto the end of the world."[3]

From Him alone cometh all grace; and to GOD be all the glory, through Jesus Christ our Lord.

[1] Psalm lxxii. 10, 11. [2] Haggai ii. 4, 5. [3] S. Matt. xxviii. 20.

NOTE A.

"In four words, ἀληθῶς, τελέως, ἀδιαιρέτως, ἀσυγχύτως, *truly, perfectly, indivisibly, distinctly*, . . . we may fully, by way of abridgment, comprise whatsoever antiquity hath at large handled, either in declaration of Christian belief, or in refutation of the foresaid heresies." "Against these," as Hooker[1] has said, "there have been four most famous ancient general councils: the Council of Nice, to define against Arians; against Apollinarians, the Council of Constantinople; the Council of Ephesus against Nestorius; against Eutychians, the Council of Chalcedon;" these four councils having been held under the sanction of the Emperors Constantine, Theodosius, Theodosius the younger, and Marcian, respectively.

NOTE B.

Acts xvi. 13.—οὗ ἐνομίζετο προσευχὴ εἶναι, where a meeting for prayer was wont to be held. Perhaps there was a proseucha, says the Bishop of Lincoln, or enclosed place for prayer there.[2] The Bishop refers to Epiphanius,[3] "who describes the proseuchæ as places of semicircular form (θεατροειδεῖς) without roofs, and outside the cities.[4] Such προσευχαὶ were commonly near the sea or rivers, as here, for the sake of the lustrations and ablutions of the Levitical law.[5] . . . It seems that at Philippi, a Roman colony, where the Jews were hated and despised,[6] they had no synagogue within the walls of the city, and were only authorised to have a *proseucha*, and that *outside* the *city gate*. Cp. Ammonius in *Caten.*, who says: μὴ οὔσης ἐκεῖ συναγωγῆς διὰ τὸ σπάνιον, παρὰ τὸν ποταμὸν ἔξω τῆς πόλεως λάθρα συνήγοντο."

[1] Hooker, *Eccles. Polity*, book v. p. 54 [10], ed. Keble.
[2] Commentary *in loc.* [3] *Hær.* lxxx.
[4] Cp. Mede's *Essay*, book i. Discourse 18, p. 67.
[5] See Joseph. *Ant.* xiv. 10, 23; cp. Juvenal, iii. 11–13.
[6] See v. 12.

NOTE C.

"Learned men," says Biscoe, "differ not a little in their opinions concerning the power left with the Jewish magistrates when their country was made a Roman province." The opinion that "the Jewish magistrates in Judæa, when under the Romans, had the power of inflicting capital punishments," has been fully argued, with much learning and force, by this writer.[1] In regard to the saying of the Jews to Pilate, "It is not lawful for us to put any man to death," he observes that "it sufficiently appears from the context that the meaning of this saying of the Jews could not be, that they were by the Romans deprived of the liberty of judging men by their law, and putting them to death. It is remarkable that, as Pilate says to the Jews in the words immediately before, 'Take ye him, and judge him according to your law;' so the Evangelist adds, in the words immediately following, 'that the saying of Jesus might be fulfilled which he spake, signifying what death he should die.' Our blessed Lord had not only prophesied that He should die a violent death, but had named the manner of His death, which was crucifixion; and that, in order hereunto, He should be betrayed into the hands of the chief priests and scribes, who should pronounce Him worthy of death, and then deliver Him to the Gentiles.[2] The evangelist John expressly observes, that by the phrase of his being 'lifted up,' our Lord 'signified what death he should die.'[3] He in this place remarks the fulfilment hereof, and rests it upon the Jews refusing to judge and punish our Saviour according to their law, as Pilate directed them. . . . For had He been judicially tried and condemned by the Jews, He had not been *crucified*. The law of Moses knew no such punishment. He might have been stoned, or strangled, or burnt, or put to death by the sword,[4] according as the crime was for which He was condemned; but He could not have been *crucified*."[5] The policy of His accusers was to make Him die by the hands of the Romans, as a scape-

[1] Chap. vi. pp. 113–244.
[2] Matt. xx. 18, 19. etc.
[3] John xii. 32, 33.
[4] Vide *Mishna Sanhed.* c. 7.
[5] Biscoe *On the Acts*, pp. 131, 132.

goat and sacrifice to Roman jealousy, for the interest of the whole nation.[1] "What prevailed with Pilate at length . . . . was that saying of theirs, 'If thou let this man go, thou art not Cæsar's friend;' which plainly implied a threatening that they would accuse him to Cæsar of remissness in his duty, ... as greatly negligent in suppressing sedition. . . . This was an argument Pilate could not withstand; therefore yielded to their importunity, condemned Him as guilty of the sedition and treason they had accused Him of, which appeared by the title he put over His head." [2]

NOTE D.

The full recognition, in the Constitutions of Clarendon, of the whole system and order of the Church's Courts is the more observable, because they represent the *State* side in the conflict of those days. Archbishop Bramhall thus states the case:

"In the reign of King Henry the Second, some controversies being likely to arise between the Crown and Thomas Becket, Archbishop of Canterbury, the King called a general assembly of his archbishops, bishops, abbots, priors, and peers of the realm, at Clarendon, where there was made an acknowledgment or memorial, 'cujusdem partis consuetudinum,' etc. . . . . of a certain part of the customs and liberties of his predecessors, that is to say, his grandfather, Henry the First, son of the Conqueror, and other kings; a 'part,' but 'ex ungue leonem,' from the view of this part we may conclude of what nature the rest were; 'of the customs,' the customs of England are the Common Law of the land; 'of his predecessors,' that is to say, the Saxon, Danish, and Norman kings successively; and therefore no marvel if they 'ought to be observed of all.' This part of their ancient customs or liberties they reduced into sixteen chapters or articles, to which all the archbishops, bishops, and other ecclesiastics, with all the peers and nobles of the realm, did not only give their acknowledgment and consent, but also their oaths for the due observation of them. . . . . One was, that 'all appeals in England must proceed regularly from

[1] S. John xi. 49, 50.

[2] Biscoe *on the Acts*, p. 142.

the archdeacon to the bishop, from the bishop to the archbishop; and if the archbishop failed to do justice, the last complaint must be to the king, to give order for redress."[1]

It has been said, that "it is not clear whether, by this provision, it was intended that the royal power should be brought to bear merely to prevent abuse of the forms of justice, or whether the cause was to be heard on its merits by the king, and the matter sent back, as has been always the case since the Reformation, to the Archbishop's Court, after decision. The form now commonly used, when an appeal has been decided by the Superior Court, is, 'that the cause be remitted to the Court below, to the end that right and justice may be there done.'"[2] The question is not practically a very important one, if, as it appears clearly throughout, down to the present time, the case is remitted to the spiritual Court: it would, of course, not be remitted unless some cause were shown suggesting failure of justice. But to suppose the king's Court sitting and judging, in a case of doctrine, on its merits, would be indeed an historical anachronism.

NOTE E.

The Act 25 Henry VIII. c. 21, had reference, primarily, to the *legislative* action of the Church, in regard to the making of canons; and provided accordingly for a revision of the ecclesiastical law by the appointment of thirty-two Commissioners, half to be of the clergy and half of the laity. It extended, at the same time, the provisions of the Act of the preceding year to all causes, restraining appeals to Rome in regard thereto. But when the Commissioners, appointed under a renewed Commission of Edward VI., made their final report, their recommendation in regard to appeals was as follows:

"Quo ordine appellandum sit.

"Ab archidiaconis, decanis, et his qui sunt intra pontificiam

[1] "Just Vindication of the Church of England;" *Works*, vol. i. pp. 143, 144.

[2] *Judgments of the Judicial Committee*, Introduction by the Rev. W. H. Fremantle, p. xxvii.

dignitatem, et jurisdictionem Ecclesiasticam habent, ad Episcopum liceat appellare, ab Episcopo ad archiepiscopum, ab archiepiscopo verò ad nostram majestatem.

"Quo cum fuerit causa devoluta, eam vel concilio provinciali definire volumus, si gravis sit causa, vel à tribus quatuorve episcopis à nobis ad id constituendis. Quibus rationibus cum res fuerit definita, et judicata, per appellationem amplius cognosci non poterit." [1]

The provisions made in the later Act for appeals from the Archbishop's Courts are the consistent following out of the principle laid down in the former Act, in regard to the King as the fountain of justice to all his subjects. "And for lack of justice at or in any of the Courts of the Archbishops of this realm, or in any the King's dominions, it shall be lawful to the parties grieved to appeal to the King's Majesty in the King's Court of Chancery; and that upon every such appeal a commission shall be directed under the great seal to such persons as shall be named by the King's Highness, his heirs or successors, like as in cases of appeal from the Admiral's Court, to hear and definitely determine such appeals, and the causes concerning the same."

The appeal was not to any temporal Court, but to the King in Chancery, i. e. to the King in his conscience, as the supreme ruler of all estates; the Lord Chancellor, the Keeper of the King's conscience, being entrusted with the choice of fit persons in regard to the subject matter in each case.

NOTE F.

There appears to be no small amount of misapprehension in divers quarters, in regard to the course of events whereby matters of clergy discipline have come into their present state; and in reference to which something, in the way of an endeavour to correct misconceptions, is due both to the importance of the subject itself, and to the memory of persons of high position in the Church, and not less high character and principle, who took a leading part, and with no little thought and care, in some of these proceedings.

[1] *Reformatio Legum Eccles.* p. 283.

It is commonly supposed, that by an Act passed in 1832, the powers of the Court of Delegates, established by the Act of Henry VIII. above referred to, were transferred to the Judicial Committee of the Privy Council. The question that thereupon arises is a very important one. I will state it as put by Canon Carter in a recent Letter, the rather because his statements are characterised generally by care and moderation. "The argument as against us," Canon Carter says, "is this: the statute of Henry VIII. giving a right of appeal to the Court of Delegates, and that of William IV., transferring the same powers to the Judicial Committee of the Privy Council, being accepted by the Church, and recognised by all priests as the law of the English Church, binds them in conscience, so as to preclude all grounds of reasonable objection to the claims made upon them." "Nothing can be fairer," as he fully allows, "or more consistent with a just compact between the Church and State, than the declarations of the Act (24 Hen. VIII. c. 12) which abolished the appellate power of the Pope in this realm, and substituted for it that of the Sovereign, thus reviving what the Kings of England had claimed in pre-Reformation times." But, in course of time, as he traces the history onward, "the Georgian æra came, with its loss," as he expresses it, "of any sense of the spiritual character of the Church or its claims; and this lasted on till quite modern days; so much so, that when the appellate Jurisdiction of the Crown was transferred by Parliament from the Court of Delegates to the Judicial Committee of Privy Council, as the late Lord Brougham remarked, there was no thought of Church questions being affected by the change. Nor, indeed, was it," he says, "till the Gorham judgment occurred that men awoke to perceive the inroad of State jurisprudence, that had imperceptibly crept in, to the general secularisation of the Church's judicial system."[1]

It is said, on the other hand, that this transference of jurisdiction was grounded on the Report of a Commission which had prominently in view cases of Clergy offences against the laws ecclesiastical; and it is therefore argued that the present arrangements can plead the high authority of the eminent

[1] *Letter*, pp. 31–36.

men, ecclesiastics as well as others, by whom this change was recommended and sanctioned.

"To secure accuracy," Canon Carter says, he will "take a list drawn up by Lord Selborne [in correspondence with a Sussex priest on the Public Worship Regulation Act; London, Hayes], of statutes since the Reformation, 'relating, more or less, to matters of procedure in the provincial and diocesan Courts of England.' They are thus stated [beginning with 23 Hen. VIII. cap. 9 (A.D. 1531), and proceeding onwards].

"2 and 3 Will. IV. cap. 92 (A.D. 1832). Act transferring to the Judicial Committee of the Privy Council the powers of the Court of Delegates, etc.

"2 and 3 Will. IV. cap. 93 (A.D. 1832). Further provision for cases of contumacy in ecclesiastical Courts.

"3 and 4 Will. IV. cap. 41, sect. 28 (A.D. 1833). Further powers given to the Judicial Committee of the Privy Council, etc.

"3 and 4 Vict. cap. 86 (A.D. 1840). Church Discipline Act, by which the whole procedure in all the ecclesiastical Courts against clergymen accused of offences against the law ecclesiastical was regulated, etc."

The list thus given—and, indeed, the common statement on the subject in popular discussion—is inaccurate, in a very important point, and loses sight entirely of an intermediate step which is necessary to throw light upon the opposing views taken on the subject.

The fact is, that there was no Act directly, and at once, transferring to the Judicial Committee of the Privy Council the powers of the Court of Delegates. The Act of 1832 (2 and 3 Will. IV. cap. 92) repealed so much of the Act of Henry VIII. as gave power to appeal to the King in Chancery, and authorised instead an appeal to the King in Council; the judgments of the Privy Council to have the same force as those of the Delegates. It was the subsequent Act of 1833 which established the Judicial Committee. This Act was the special work of Lord Brougham, whose statement in regard to it was undoubtedly to the effect above stated.

The former Act, of 1832, was grounded, unquestionably, upon the Report of a Royal Commission, appointed, July 5, 1830,

"to make a diligent and full inquiry into the course of procedure, etc., and into the jurisdiction of the Ecclesiastical Courts in England and Wales." The Commission included the Archbishop of Canterbury (Howley), the Bishops of London (Blomfield), Durham (Van Mildert), Lincoln (Kaye), St. Asaph (Carey), and Bangor (Bethell); and with them Lord Tenterden, Chief Justice; Lord Wynford, Sir Nicholas Tindal, Chief Justice of Common Pleas; Sir W. Alexander, Chief Baron of the Exchequer; Sir John Nicholl, LL.D. (Dean of the Arches); Sir Christopher Robinson, LL.D. (King's Advocate); Sir Herbert Jenner, LL.D.; Sir C. E. Carrington, Stephen Lushington, R. C. Ferguson, Esquires.

The recommendation in regard to "the jurisdiction of the Delegates" was contained in a first and "Special Report," of Jan. 25, 1831, presented in conformity with a communication from the Lord Chancellor (Brougham), requiring the Commissioners to report specially and immediately "on the jurisdiction of the Court of Delegates, and the expediency of transferring the jurisdiction to the Privy Council;" the opinion of the Commissioners to that effect having been already communicated to the Lord Chancellor, in answer to a question then proposed to them. The Report stated the several grounds and reasons for that opinion, in regard to the objections to which the Court of Delegates, in its practical operation, was liable; and proceeded to say: "Though we might have found difficulty in proposing an unobjectionable substitute, if our attention had not been directed to the expediency of removing that jurisdiction to the Privy Council, we have no hesitation in assenting to that proposition, subject to the adoption of such suitable regulations and provisions as we have before suggested for rendering the Tribunal efficient for such purpose."

The first reason stated for the opinion, "that an Appeal to the Privy Council would not be attended with the objections and inconveniences above enumerated," was as follows:

"The Privy Council, being composed of *Lords Spiritual* and Temporal, the Judges in Equity, the Chiefs of the Common Law Courts, *the Judges of the Civil Law Courts*, and other persons of legal education and habits, who have filled judicial situations, seems to comprise the materials of a most perfect tribunal for deciding the appeals in question," etc.

It was thought that such an arrangement followed "the principle on which the present Court of Delegates" was "constituted;" and "the exercise of this jurisdiction by the Privy Council would be no anomaly; for, in testamentary and other *Ecclesiastical matters* arising in the Colonies, the ultimate appeal" was to the King in Council. It was said further: "The number of Appeals is not likely to be onerous, since the whole number from both the Provinces to the Delegates for the last thirty years has been only ninety-five, which gives an average of little more than three in the year;" though it was added, "from the great increase of personal property, the number of late years had rather increased." The mention of "personal property" will suggest at once that the great majority of cases was of a *testamentary* kind: in fact, of the cases enumerated, it appears, no less than sixty were testamentary; twenty were matrimonial; the remainder being such as for "subtraction of church rate, subtraction of tithe, defamation, office of judge, faculty, subtraction of legacy," etc. Since the establishment of the Court of Probate and Divorce, it is forgotten what was the great majority of cases which formerly came before the ecclesiastical Courts; not what people think of now exclusively, questions of doctrine and ritual.

The General Report of the Commissioners was not presented till Feb. 15, 1832. It began with a careful historical statement respecting the origin and character of the ecclesiastical laws administered in this country, and the establishment of the ecclesiastical tribunals; describing, summarily, the several courts, matters of jurisdiction, and modes of proceeding (pp. 10–20); with the alterations and improvements suggested (pp. 21–53). The question as to the Court of Delegates was referred to (pp. 20, 21), as already reported on. After a full inquiry and report respecting the *civil* jurisdiction exercised by the ecclesiastical Courts, the Commissioners proceeded to offer some suggestions respecting the authority hitherto possessed by those tribunals, of a *criminal* nature (p. 53). This portion of the Report began thus:

"Our notice has been first attracted to that branch of it which embraces the *Correction of Clerks*. It is most fitting that there should exist some tribunal to which the clergy should be amenable for *any open violation of morality*, or *disregard of the*

sacred obligations into which they have entered on becoming ministers of the Church of England; but we have had the satisfaction," it was added, "of finding that, for many years last past, the instances have been very rare in which it has been necessary to resort to judicial proceedings, for the purpose of punishing offences committed by them."

It is sufficiently evident that they were *moral* offences which were prominently in the view of the Commissioners; and indeed it was further said, "Some cases of a flagrant nature, which have occurred of late years, have attracted the attention of the public to the corrective discipline of the Church, as administered by the ecclesiastical Courts." One case in particular was referred to, very notorious at the time, "a peculiar and extreme case, in which proceedings for a prohibition were carried on in the Court of King's Bench, and afterwards, by Writ of Error, in the House of Lords; and when the question of prohibition had been decided against the defendant, the case was carried by appeal to the Court of Delegates, where the decision of the Court of Arches was ultimately affirmed" (p. 56).

There followed a recommendation of an amended course of proceeding, which showed that the eminent persons concerned had not lost sight of all principles of ecclesiastical law, or of the inherent spiritual claims of the Church and its ministers. They said:

"Deeply impressed with the importance of the subject, and the difficulties with which it is surrounded, we have endeavoured to find a remedy for some of the inconveniences which attend the present mode of proceeding, without prejudice to any interests, and without lessening, in the smallest degree, any security which may be justly claimed for the maintenance and protection, either of the civil rights, or of *the spiritual character and functions*, of the accused parties."

"With respect to the tribunal which we recommend, we may remark that it will restore to the Bishops that personal jurisdiction which they *originally* exercised, and which was afterwards delegated by them and their Chancellors and officials. The doctrine of the *Canon Law* is, that although the trial of causes of certain descriptions may be properly entrusted to a lay Judge, to the Bishop himself belongs 'inquisitio,' 'correctio,'

'punitio excessuum, seu amotio à beneficio.' Agreeably to this principle," they say, "the power of deprivation is reserved by *our Canons* to the Bishop in person; and the same principle seems to apply to the case of suspension, and to the infliction of any other censure which may affect a clergyman's spiritual functions."

Provisions are suggested, accordingly, for all proceedings to be before the Bishop, who is to hear the case with the assistance of one or more legal assessor or assessors, to be selected by himself. In any case arising in the diocese of Canterbury, proceedings to be before the Bishops of London, Winchester, and Rochester, or any one or two of them, to be appointed by commission from the Archbishop; and in like manner in the diocese of York. An appeal to lie to the Archbishop of the Province, who shall hear such appeal, with the assistance of one or more of the Provincial Judges; and, if he shall think fit, with other legal assistance (pp. 57, 58).

I confess, I cannot see here the signs of that absolute unmindfulness or indifference to all Church principle which is supposed to characterise everything that has been thought or done in these matters, during the last fifty years or more.

In 1833, as has been already said, Lord Brougham brought in the Bill which constituted the Judicial Committee of the Privy Council. It was with reference to this Bill that Lord Brougham made the statement above mentioned. When the Bishop of London (Bishop Blomfield) laid upon the table of the House of Lords, on one of the first days of the Session of 1850 (February 5),—more than a month *before* the Report in the Gorham case was delivered,—a Bill, the same in its main features with Bills which had been brought in for two or three years successively, and containing a clause proposing a new Court of Final Appeal, to which he invited special attention, Lord Brougham "approved of the course which the right reverend prelate had pursued on this subject. He had not been present," he said, "at the arguments in the great case, Gorham *v.* the Bishop of Exeter, but he had heard the echo of them at a distance. Anything that could relieve the Judicial Committee of the Privy Council of such cases *would be a great boon to its members, and would be generally beneficial.* . . . He would give

the proposition of the right reverend prelate, when he saw it, his best consideration." [1]

When, again, the Bishop of London brought in his new Bill, later in the same Session (June 3), subsequently to the decision in the Gorham case, Lord Brougham expressed his feeling as to the peculiar position in which he stood in regard to the subject of it. He said "it was his (Lord Brougham's) Bill that constituted the Judicial Committee." "He believed his noble and learned friend on the woolsack would agree with him that the abolition of the old Court of Review did take away from the Church to a certain extent the security which she had possessed for the soundness of her doctrines." "He could not help feeling that the *Judicial Committee* of the Privy Council *had been framed without the expectation of questions like that which had produced the present measure being brought before it.* It was *created for the consideration of a totally different class of cases;* and he had no doubt that, if it had been constituted with a view to such cases as the present, some other arrangement would have been made. He was most distinctly in favour of the Judicial Committee being enabled to take the opinion of qualified *prelates.*" [2]

It has been stated, in fact, that in the Act of 1833, the enacting clause which constitutes the Judicial Committee a final Court of Appeal for certain Courts, enumerated the several Courts that were to come under its jurisdiction, but omitted the ecclesiastical Courts altogether. They only came under the operation of the Final Court of Appeal by the general clause, at the end of the Act, which comprehends them in general terms, but does not specify them particularly. Were it not, therefore, for that general clause, the ecclesiastical Courts could never have come under the jurisdiction of the Judicial Committee of Privy Council." [3] "The explanation of the matter is, I believe"—said, more recently, an accurate and well-informed person—"that the draughtsman, in drawing a clause relating to the appeals which were then pending, added words including all other appeals that might be referred to his

[1] Hansard, 3rd series, 1850, vol. i. col. 333–336.
[2] Ibid. col. 629.
[3] *Chronicle of Convocation* for 1865, p. 2033.

Majesty in Council."[1] But, indeed, it would not, perhaps, be very surprising, as regards the ecclesiastical operation of the Bill, if, amidst the difficulties and dangers of the year 1833—specially the Irish Church Bill—Lord Brougham's Bill "for the better ordering of judicature in His Majesty's Privy Council," attracted less notice than, as events proved, it deserved. It should, at the same time, be noticed that the Bill contained the following clause: "Provided always that nothing herein contained shall prevent his Majesty, if he shall think fit, from summoning any other members of the said Privy Council to attend the meetings of the said Committee." This would allow of the attendance of the three episcopal Privy Councillors, when any matters affecting Church doctrine or discipline were concerned. It was by virtue of this clause that the two Archbishops and the Bishop of London were specially summoned in the Gorham case; the Archbishops and the Bishop of London in the case of Liddell *v.* Westerton; and the Archbishop of York (Longley) in the case of Poole *v.* the Bishop of London. In more recent cases, the only prelates present have been members of the Committee, conjoined therein with lay members.

In 1840 was passed the Church Discipline Act (3 & 4 Vict. c. 86), the Act lastly named in the list quoted above,—by which Act (as there stated) "the whole procedure in all the ecclesiastical courts against clergymen accused of offences against the law ecclesiastical was regulated." It would be presumed, according to the view now taken so strongly in certain quarters, that this Act, as the latest in the series, would take its origin from the lowest depth of Erastianism, utterly ignoring Church principle, and be a precedent for such legislation.

The Bill was really the result of very full and earnest discussion for three years previously to its passing; specially on the part of the Bishop of Exeter. After providing for a preliminary commission, with the opportunity given for admission, by the party accused, of the truth of the articles laid to his charge, in which case "the bishop, or his commissary specially appointed, shall forthwith proceed to pass sentence thereupon according to the ecclesiastical law," the Act goes on to provide (sec. 11) that, this failing, "the bishop shall proceed to hear

[1] *Chronicle of Convocation*, 1869, p. 86.

the cause, with the assistance of three assessors, to be nominated by the bishop; one of whom shall be an advocate who shall have practised not less than five years in the Court of the archbishop of the province, or a serjeant-at-law, or a barrister of not less than seven years' standing, and another shall be the dean of his cathedral church, or of one of his cathedral churches, or one of his archdeacons, or his chancellor; and upon the hearing of such cause the bishop shall determine the same, and pronounce sentence thereupon according to the ecclesiastical law." There was at the same time power given to the bishop to send the cause by letters of request to the Court of Appeal of the province.

Then, for appeals, the Act provides (sec. 15) that "it shall be lawful for any party who shall think himself aggrieved by the judgment pronounced in the first instance by the bishop, or in the Court of Appeal of the province, to appeal from such judgment; and such appeal shall be to the archbishop, and shall be heard before the judge of the Court of Appeal of the province, where the cause shall have been heard and determined in the first instance by the bishop, and shall be proceeded in, in the said Court of Appeal, in the same manner and subject only to the same appeal as in this Act is provided with respect to cases sent by letters of request to the said Court; and the appeal shall be to the Queen in Council, and shall be heard before the Judicial Committee, when the cause shall have been heard and determined in the first instance in the Court of the archbishop."

And, finally, to rectify the oversight which had been committed in the Act of 1833, it is provided (by sec. 16) "that every archbishop and bishop of the united Church of England and Ireland, who now is or at any time hereafter shall be sworn of her Majesty's most honourable Privy Council, shall be a member of the Judicial Committee of the Privy Council for the purposes of every such appeal as aforesaid; and that no appeal shall be heard before the Judicial Committee of the Privy Council, unless at least one of such archbishops and bishops shall be present at the hearing thereof; provided always that the archbishop or bishop who shall have issued the commission hereinbefore mentioned in any such case, or who shall have heard any such case, or who shall have sent any such case by letters

of request to the Court of Appeal of the province, shall not sit as a member of the Judicial Committee on an appeal in that case."

The Act of 1840 embodied, in its essential points, the "Breviate of a proposed Bill" which the Bishop of Exeter had put forth, with his Charge of 1839, appending to it a Protest which he had entered on the Journals of the House of Lords, against the Bill of the preceding session. That Protest had been grounded explicitly on principles such as these.

"Dissentient: 1. Because, though the ecclesiastical judges derive their power 'in foro exteriori,' even in spiritual matters, from the State, their authority is independent of, and pre-existent to, the sanction of the temporal law, which merely adds temporal consequences to the ecclesiastical censures, the infliction of which is part of the power of the Keys vested in the Church by its Divine Founder, and exercised by it in the earliest ages. . . .

"2. Because . . . while the Bill thus seeks to arm a layman, by authority of Parliament, with that spiritual sword which not the highest lay potentate on earth can wield, it hides from the Sovereign, and from the great council of the nation, that solemn duty which 'He by whom kings reign, and princes decree justice,' hath inseparably annexed to Christian magistracy, the duty of upholding and enforcing the essential discipline of His Church; a duty which this State, so long as it acknowledges our own apostolic branch of that Church, can only discharge by sustaining and strengthening, in all things necessary, the government by bishops; a duty which the sovereigns of this realm have hitherto religiously observed, and which the Legislature hath repeatedly recognised in its most solemn acts, especially in that great statute of 24 Henry VIII. c. 12, which most eloquently, yet most accurately, sets forth the constitution of this imperial realm, 'governed by one supreme head,'" etc. . . .[1]

"And again, in those more modern statutes, which are, as it were, the landmarks of the Constitution, the 1st William and Mary, c. 6, passed by Mr. Somers and the other enlightened patriots of that day, and embodying the contract between the

[1] Vid. sup. pp. 37, 38.

sovereign and the people in the coronation oath; of which contract the 'preserving the rights and privileges of the bishops and clergy' is a prominent part;—and the Act of Union with Scotland, reciting and confirming, as a fundamental article of that union, the Act for securing the Church of England, in which it is especially provided, that every king and queen coming to the royal government of the kingdom of Great Britain, shall take and subscribe an oath that he will maintain to the utmost of his power, not only 'the doctrine and worship,' but 'the discipline and government of the Church of England.'"

The Bill of 1839 had involved, in the judgment of the Bishop of Exeter, "principles too sacred to be surrendered:" he was satisfied with the Bill of 1840, because it embodied those principles in regard to the exercise of the authority and jurisdiction belonging to the Church and its spiritual rulers. The main question at issue was in regard to the jurisdiction of the provincial Court, in reference to the principles of diocesan episcopacy, and its inherent spiritual authority.

In practice, under the Act of 1840, in conformity with usage in ecclesiastical causes, cases have been constantly sent at once by letters of request to the Court of the province, as saving one trial, and thereby avoiding delay and expense. The preliminary commission of inquiry provided by the Act was intended for the protection of the clerk against frivolous or vexatious charges, and at the same time to supply a speedy and summary mode of dealing with charges admitted by the accused. It became, unfortunately, the practice to retain counsel for defence before the commission, which thus, inconveniently, assumed the character of a regular trial, to be followed by another more formal one; hence increased scandal in cases of moral offence, and additional expense. But, meanwhile, the *principles* embodied in the Act ought not to be lost sight of, or, without inquiry, to be presumed to be utterly wrong.

It was the Gorham case, undoubtedly, which awoke the minds of Churchmen generally, of the thoughtful laity not less than of the clergy, to what then revealed itself as the anomalous and dangerous position of Church matters. Not that it is all correct to suppose that no objection was felt till that decision was given. It had been presumed that in all such cases the

provisions of the Act of 1840 would, at least, apply; and spiritual persons form part of the tribunal. But the Gorham case took people by surprise, arising, as it did, out of a case of "duplex querela," and therefore not coming under the Church Discipline Act. And the Committee named consisted of five laymen, none of whom need be a member of the Church of England. It ought not, meanwhile, to be forgotten, that eight years before, in his Charge of 1842, the Bishop of Exeter had called attention to the need of canons "to devise a more satisfactory tribunal of appeal," or, "at least, to supply to such a tribunal some better means of knowing what that doctrine is." In ecclesiastical causes, the lay judges, "very learned indeed, but in another faculty," were "obliged," as the Bishop expressed it, "to pick their course as they can, through ways which they often find very rough and very tangled." "True it is," the Bishop went on to say, "that by a recent law it is enacted, that in every appeal to this Court, in a cause of criminal proceeding against a clergyman below the rank of bishop, some one archbishop, or bishop, being a member of the Privy Council, must be present as a member of the Committee when the appeal is heard; but" in other causes . . . "the Court has not the assistance of a solitary bishop." He called to mind that, "when Henry VIII. rescued the imperial crown of England from its long and disgraceful thraldom to Rome, the most important of all his measures was the Statute of Appeals; that great law which," as the Bishop proceeded to say, "defines and describes the constitution of this realm more expressly and more closely than any other Act in the Statute Book." The Bishop exemplified the difficulty, to which he had called attention, by a reference to a case which had just before been decided by the Judicial Committee, in a cause which had excited more than ordinary interest throughout the land, by reason of the great theological and spiritual questions which were mixed up in it, and in which "final judgment was given by an ex-Lord Chancellor, an ex-Lord Chief Justice of the Court of Common Pleas, a Puisne Judge of the same Court, and the Judge of the High Court of Admiralty; four men," said his Lordship, "of high character and very high attainments, but not exactly such as any one man in the realm would have selected to ventilate

the questions which they, whether necessarily or unnecessarily, connected with the point they had to decide." The ex-Lord Chancellor was Lord Brougham, who delivered, and therefore no doubt drew up, the judgment, and perhaps derived from this case (Martin *v.* Escott) something of the feeling which he expressed on occasion of the Gorham case, as we have seen, in reference to such cases coming before the Judicial Committee.

In 1847 a Bill was brought into the House of Lords by the Bishop of London, prepared after deliberations of the Bench of Bishops, and was referred to a Select Committee, in which it was carefully amended; it was brought in again in 1848 and 1849, and again in February 1850, as above mentioned. These Bills all contained provisions for a new Court of Final Appeal.

Not long after the revival of the active functions of Convocation, the Upper House, in February 1854, appointed a Committee to consider and report on what might be expedient for the better enforcement of discipline among the Clergy, and desired that ten members of the Lower House might be named to act with them on a Joint Committee. This Committee met, and agreed on a Report which was presented to the Upper House, February 8, 1855. It was taken into consideration by the Lower House, by the Archbishop's desire, on the following day.

It is due to the Upper House of Convocation of the Province of Canterbury, that it should not be forgotten altogether how freely they invited the assistance of the Lower House in dealing with a question of no ordinary importance and difficulty; and it is due to the Lower House to bear in mind that it was none other than a painstaking and careful consideration which they gave to the subject, when they were called to consider it in conjunction with their Lordships of the Upper House. It was indeed no merely temporary, unreasoning excitement of feeling, aroused by some decision which had given offence to this party or that; it was an earnest desire to find a remedy for that which was widely felt among Churchmen, clergy and laity alike, to be a real source of disquiet and danger.

In regard to the Court of Final Appeal, the Report of the Joint Committee of 1855 contained the following passage:

"13. That the greatest difficulty besets the due adjustment of the course of final appeals.

"14. That it appears to your Committee of the greatest moment, whilst we maintain the just supremacy of the Crown, as the ultimate source of justice and redress to every subject complaining of wrong, whether in matters ecclesiastical or civil, to combine therewith security that ecclesiastical questions shall be decided by persons qualified, by office and acquaintance with the course of law ecclesiastical, to decide thereon.

"15. That it appears to your Committee that the acknowledged difficulties which attach to this subject have been much increased by recent legislation, which almost accidentally transferred the hearing of these causes from the Queen in Chancery to the Queen in Council.

"16. They would suggest the expediency of considering whether the best solution of this question would not be to restore this jurisdiction to the Queen in Chancery; and to enable Her Majesty, when any appeals shall be presented from the Court of the province in matters ecclesiastical, in which any clerk in holy orders shall be a party, except in causes matrimonial and testamentary, to remit the cause for re-hearing in the Court of the Archbishop; providing that there should sit, under the authority of the Great Seal, with the Judge of that Court, other ecclesiastical and common law Judges, to hear and decide finally in the cause."

The House accepted this with an amendment as follows:

"That a certain number of the archbishops and bishops be necessarily members of such Court, and the presence of a certain number of such spiritual members should be necessary to its proceeding; and that all lay members of the Court shall be members of the Church of England."

In 1856, in the prospect of a Clergy Discipline Bill to be brought in, not by the Episcopal Bench, the Archbishop desired the Lower House of the Convocation of Canterbury to take into consideration the subject of Clergy Discipline, and to appoint a Committee of their own body to prepare a report thereon, and to present the same on the next Session.[1] A Committee of sixteen members was named on the day following; and on the reassembling of Convocation, on the 15th of April, their Report was presented to the Upper House.[2] The Report underwent

[1] *Journal of Convocation*, vol. ii. pp. 72–83. [2] Ibid. pp. 99–102.

a very full discussion in the Lower House, on that and the following day;[1] and on the 17th the Report, as agreed to by the Lower House, was presented to the Upper.[2]

On the subject of the Court of Final Appeal, the Report (1856) was as follows:

"19. In approaching the subject of the due adjustment of the course of Final Appeals in question of doctrine, the House felt that they were entering upon the most grave and important of the matters referred to their consideration; in which they were required to combine full security for the doctrine and discipline of the Church, with the maintenance of the supremacy of the Crown, as the ultimate source of justice and redress to every subject complaining of wrong, whether in matters ecclesiastical or civil."

With reference to this subject, it was resolved:

"(1) That in the judgment of this House, the principles to be kept in view in regard to Final Appeals are those which were fully and carefully embodied at the time of the Reformation, in the preamble to the Statute of Appeals (24 Hen. VIII. c. 12); in which it is declared, that the Realm of England is an empire," etc. . . . [the words of the Act being embodied in the Resolution].

"(2) That, fully recognising the principle, that no Court of Final Appeal has any jurisdiction or authority to settle matters of Faith, which office belongs to the Church alone; and regarding the proper function of such Court to be simply that of applying to the particular case in hand, in the rendering of justice therein, the authoritative decisions of the Church, as contained in the settled formularies of her faith and worship, agreed upon in her provincial synods; this House yet feels it right to declare, that no arrangement would appear satisfactory which did not give full security, in accordance with the principles above recited, that all questions involving points of doctrine should be dealt with, under the authority of the Crown, by the spiritualty, assisted by such legal persons as might be deemed necessary for the ends of justice."

There had been a very full and careful discussion of this subject, and this resolution was carried by a very large majority (38 to 8).

[1] *Journal of Convocation*, vol. ii. pp. 185–192. [2] Ibid. pp. 214–221.

It was understood (pp. 264–293) that the "spiritualty" was "not limited to the prelates and ordained priests, but consisted of those who were appointed or had authority to bear rule, and to deal with disputed cases in the Church of Christ. Primarily," it was said, "it might be viewed as belonging to the episcopate; secondly, to the presbytery or ordained priests; and thirdly, to such laymen as they might call to their assistance and counsel in determining such cases." "As a general principle," it was maintained, the "spiritualty meant ecclesiastical officers, either ordained, or, if not ordained, acting under the authority of the Church of Christ." "In the controversies which our great divines waged with the Church of Rome, when the Church of Rome taunted the Church of England with the fact of the final decision in matters of faith being vested in the Crown, Bishop Andrewes, Jeremy Taylor, and Archbishop Bramhall, held that it was not true that the supremacy of the Crown invested the monarch with any such authority; that he was bound to see justice done to all under his sovereignty,—done in the best way, and by the fittest persons; and as, for that purpose, he made provision for deciding temporal matters by the temporalty—that was, the ordinary judges—so in spiritual matters this would be entrusted to the spiritualty."

There was reference further made to Hooker, as "shewing that there was a combination of lay persons with the spiritual, in a way which was at the same time consistent with the Statute of Appeals. Hooker said, 'Our judges in causes ecclesiastical are either ordinary or commissionary: ordinary, those whom we term Ordinaries; and such, by the laws of this land, are none but prelates only, whose power to do that which they do is in themselves, and belongeth to the nature of their ecclesiastical calling. In spiritual causes, a lay person may be no Ordinary; a Commissionary Judge there is no let but that he may be; and that our laws do evermore refer the ordinary judgments of spiritual causes unto spiritual persons, no man which knoweth anything of the practice of this realm can easily be ignorant.' Again: 'We see it hereby a thing necessary to put a difference, as well between that ordinary jurisdiction which belongeth to the clergy alone, and that commissionary wherein others are for just considerations appointed to join with them; as also between both these jurisdictions and a third, whereby the King

hath a transcendent authority, and that in all causes, over both.' He speaks of the certainty with which our laws have prescribed bounds unto each kind of power. 'But of this,' he says, 'most certain we are, that our laws do neither suffer a spiritual court to entertain those causes which by the law are civil, nor yet, if the matter be indeed spiritual, a mere civil court to give judgment of it. Touching supreme power, therefore, to command all men, and in all manner of causes of judgment to be highest, let this much suffice, as well for declaration of our own meaning, as for defence of the truth therein.'"[1]

Upon Hooker's principles, undoubtedly, it is absolutely essential that the derivation of authority to the judge in the spiritual court from the spiritual authority, the Archbishop or Bishop, should be direct and immediate, and the link as close as possible. In no other way could the Church of England, to his view, stand her ground against the Romanist or the Presbyterian; the Pope of Rome, on the one hand, and the Consistories of Calvin's discipline on the other.

The question of the Court of Final Appeal came again before the Lower House in the Sessions of the following year (1857). A resolution was passed by the Upper House, desiring the Lower House to consider and report, "if it has any further conclusions which it wishes to present on the subject of final appeal on points of doctrine in ecclesiastical causes." The subject, as was stated by the Bishop of Oxford, had been "committed to the Lower House, which made a report thereon, but expressed a wish for more time to consider this important point. He thought that the final judgment of the Lower House ought to be brought before their lordships." The Bishop of London suggested a doubt, on the ground that the other House had already expressed their opinion; and he thought it more desirable to abide by what they had reported, than to invite new discussions, which might lead to a different conclusion.[2] The motion, however, was agreed to; and the Lower House on the same day resumed the consideration of the subject, following up, in fact, a discussion which had begun in the last session (April 17) of the preceding year. After full debate on that

[1] *Journal of Convocation*, pp. 278, 279. See Hooker, *Eccles. Pol.* viii. 8 (3), (7), (9).

[2] Ibid. p. 349.

day and the day following, in the course of which several propositions and resolutions were negatived or withdrawn, the House finally carried, without division, the following resolution; which was duly presented to the Upper House the next day (February 6):

"The Lower House of Convocation desires to tend its respectful acknowledgments to his Grace the President, for the communication made to this House, desiring it to consider and report whether it has any further conclusions which it wishes to present on the subject of final appeal on points of doctrine in ecclesiastical causes. The Lower House has taken into its renewed and anxious consideration this portion of the subject, with the various difficulties which beset it, and would beg only earnestly to commend to the consideration of the Upper House the principles embodied in the Report already presented to their Lordships, as those which, in the judgment of this House, are to be carefully kept in view with regard to final appeals."[1]

It had been proposed, in April 1856, that the resolutions brought forward in the Lower House should include the following:

"That in regard to the particular provisions by which these essential principles would best be secured, this House would desire to leave the question, as relating to the general polity of the Church, to the consideration, in the first instance, of the Upper House."

But it was not thought necessary to embody such a resolution formally in the Report; although it was felt that, "considering that, ever since the year 1845, this question of the Court of Appeal had formed part of the several Bills brought into Parliament on the subject of Church Discipline, and seeing there had been Bills in 1845, in 1846, in 1847, in 1848, in 1849, in 1850, and again in May, 1850—in addition to which there had been the consultations of the joint Committee of the two Houses in Convocation—the subject had been so much under the consideration of the Bishops, that all matters of detail might advantageously be left to them."[2] It was, moreover, very strongly felt, and had been earnestly expressed by persons whose

[1] *Journal of Convocation*, pp. 352, 365–370.

[2] Ibid. pp. 238, 272.

opinions on the subject were entitled to the most respectful consideration, that it would be of very doubtful expediency to make Convocation directly responsible for the arrangements which might be suggested for a new Court of Appeal; the responsibility at present, in regard to the Court of Appeal, resting not with the Church, but with the State.

And thus the matter rested, in the Convocation of the Province of Canterbury—so far as regards any resolution as to the principles, or details of legislation on this subject,—and, in fact, so it has rested to the present time.

In the Sessions, indeed, of 1865 the question came up again, in consequence of petitions largely and influentially signed, presented to the two Houses of Convocation, February 17, in reference to the recent judgment in the case of *Essays and Reviews*.[1] It came before the Lower House on the same day, on the Report of a Committee appointed in June, 1864, and gave rise to a lengthened debate (February 17);[2] which was resumed on May 16, and concluded on the following day (May 17).[3] The result of the debate was, that a proposition for an amended Court was rejected by a majority of one (21 to 22); the resolution previously carried having been, "That the present Court of Final Appeal in ecclesiastical matters is open to grave objection, and that its working is unsatisfactory."

In the following year (1866), in the new Convocation, the question was again brought (May 1) before the Lower House. Two schemes were proposed; but the House adopted by a considerable majority (35 to 14) the amendment, "That this House do reaffirm the resolution passed with reference to the Final Court of Appeal by the late Lower House of Convocation during their Session of 16th of May, 1865, 'That the constitution of the present Court of Appeal in ecclesiastical causes is open to the gravest objections, and that its working is unsatisfactory.'"[4]

There can be no doubt that the unfitness and anomaly, which, owing to the oversight that has been spoken of, had been intro-

[1] *Chronicle of Convocation*, 1865, pp. 1981–2005.
[2] Ibid. pp. 2020–2052.
[3] Ibid. pp. 2061–2103, 2116–2142.
[4] Ibid. (1866) pp. 229–250.

duced into the working of the ecclesiastical judicature by the Act of which he had been the author, had strongly and permanently impressed itself on the mind of Lord Brougham. When, in February, 1857—seven years after the Gorham case—the Lord Chancellor had given notice of a Bill to be brought into the House of Lords on Clergy discipline, "Lord Brougham asked his noble and learned friend on the woolsack, whether the Bill which he contemplated introducing into this House with respect to ecclesiastical discipline would contain any provision for *that which he had so frequently urged upon their lordships' attention*, viz. a provision for giving to the Judicial Committee of the Privy Council, as a Court of Appeal, the opportunity of getting access to the opinions of the episcopal bench, or a portion of that bench, upon questions of doctrine incidentally, but most importantly, coming before them. He did not mean to say, that the Judicial Committee was to be bound by the answers they received from the ecclesiastical authorities, but that they should have the benefit of the opinion submitted to them, in the same manner as the Court of Chancery used to take the opinions of courts of law, though not bound by those opinions." In reply to Lord Brougham, "the Lord Chancellor said that such a provision would be found in the Bill which he should bring before their lordships. His most reverend friend (the Archbishop of Canterbury) had been kind enough to communicate to him, in conjunction with a great many of his right reverend friends, a sketch of a Bill for the amendment of the present law relating to the Church discipline. The Bill contained a provision to the effect indicated by his noble and learned friend, but he (the Lord Chancellor) thought it very inconvenient and cumbrous. The course he proposed was exactly that suggested by his noble and learned friend, namely, that some of the episcopal bench should attend the Judicial Committee as assessors, when their presence would be likely to throw light upon any case brought before that body." [1]

On the earlier occasion before referred to (February 1850) the Bishop of London, himself a member of the Ecclesiastical Law Commission of 1830, had said, in regard to the Judicial Committee, that "that tribunal was not a proper one

[1] *Times*, Feb. 7, 1857.

in questions of Church discipline," and that it was *evidently not within the contemplation of those who had constituted it.* . . . With respect to the discussion of questions affecting matters of religion, it was quite clear that the Judicial Committee of the Privy Council was not the most fitting tribunal; . . . . and at this moment"—this, it will be carefully borne in mind, was *before* the decision had been given in the Gorham case—"a great number *both of the clergy and the laity of the Church* felt their consciences burdened by the fact of questions of heresy and false doctrine being ultimately referred to such a tribunal. . . . With respect to these . . . . cases, not only was it not provided that any member of the Episcopal Bench should sit as a member of the Committee, but no care was even taken that the members of it should be members of the Church of England."

After a lapse now of twenty years since the matter was, as we have seen, very anxiously and fully considered in Convocation, a change has been made in regard to final appeals which, in the judgment of sound Churchmen, must be held, I think, to be undoubtedly in the right direction. In the process of legislation by the State with reference to a Court of Supreme Judicature, it has come to pass, without any direct responsibility of Convocation for the change, that, instead of a mixed Committee, the Judicial Committee shall consist entirely of lay Judges, with a body of episcopal assessors to inform and advise the Court when spiritual causes are before it. A lay court is the direction in which the wishes of Churchmen have been generally tending of late years. The recognised order of former times is, indeed, in some sense, inverted, in that now the tribunal is lay, and the assessors spiritual; but the *principle* of a distinct voice of the spiritualty on spiritual questions is, in a certain manner, recognised and acted upon. It would occupy too large a space, by far, to represent and discuss the several schemes which have, from time to time, been suggested for a reformed court. It may be well, however, to refer to one scheme, advocated by Canon Carter, as it has been by others, viz. to have "a body composed partly of bishops, partly of theologians, chosen by the whole of Convocation," to whom reference should be made as decisive in matters of pure doctrine or usage, while the State Court

would judge of matters of fact, and questions of temporalities."[1] The difficulty, which has been strongly felt, before now, in regard to such a scheme, is, that in matters of doctrine, the *whole* question is spiritual. It is true, there is a temporal issue depending, viz. the loss of a benefice or other appointment; but the entire question before the Court is of spiritual cognisance. There is to be set, on the one side, the doctrine of the Church, as contained in her authorised formularies; on the other side, the statements of the individual, exhibited in distinct articles; and the question to be decided is, Are these in agreement with each other, or, at least, not so divergent as to incur justly condemnation, with its consequent penalties or temporal loss? Now it requires fully as much the theological mind and "spiritual learning" to judge of the real character of strange doctrines and novelties in religion, as to state what is the Church's doctrine. The latter is, for the most part, sufficiently clear; not so the former. It appears, therefore, impossible to divide the cause into two parts: both must come before the spiritual judges, or experts. Nor is it desirable that the bench of bishops, with or without assistant divines, should be called upon continually for fresh statements, on each emergent occasion, what the Church's doctrine, on this point or that, is. After the Gorham decision, there was a strong feeling, on the part of a great body of Churchmen, that a reassertion of the doctrine of baptism should be sought for, in consequence of the doubt thrown upon it by the decision. It was felt by others, that it was far safer to let the Church's existing formularies make their voice heard, and their true force felt by the better acquaintance with them, and the deeper study of their meaning, which the controversy that had arisen had already brought about. And there are few persons, I think, who would now wish that a new definition of the doctrine of baptism had been drawn up and put forth in 1850. Of new definitions, virtually, of faith, proceeding from such a body, complaints might soon arise from divers quarters, "Non hæc in fœdera veni."

Another view was strongly in favour of eliminating the spiritual element altogether out of the Court, and making it

[1] *Letter*, p. 42.

entirely a lay tribunal, so that it would claim no sort of spiritual authority for its decisions. It seemed to be lost sight of, on this view, that the first object of any Court, and specially of a Court dealing with sacred interests and Divine truth, was, that its judgments should be guided by competent knowledge; else what would become of those, the poor of the flock especially, who were in danger of being led astray by false teaching? and what would become of "the discipline of the Church," to which "it appertaineth that inquiry be made of evil ministers," in order that, "finally being found guilty," they may "by *just judgment* be deposed;" and being found innocent, be maintained in their innocency, and in their just rights?

In regard to the Clergy Discipline Act of 1840, one point in particular requires to be noticed. It was certainly intended,—and it was supposed by legal authorities to have successfully carried into effect the intention—to enable the bishop, in the first stage of proceedings, to protect a clerk against prosecution, where the bishop was of opinion that proceedings ought not to be taken. Thus Mr. W. G. Brooke observes, "In the case of proceedings under the Act of 1840, it seems to be established that the bishop has a discretionary power to stop proceedings *in limine*."[1] To the same effect, Sir R. Phillimore says, "The words, 'it shall be lawful,' construed with the other words, 'if he shall think fit,' and the whole tenor of the Act, do not take away the discretion of the ordinary as to permitting or refusing his office to be promoted, or, in other words, a criminal suit to be instituted against a clerk."[2] He refers to the cases, "Reg. *v.* Bishop of Chichester, Martin *v.* Mackonochie, and Elphinstone *v.* Purchas." Mr. Brooke adds, "But the point is not expressly ruled, and Mr. A. J. Stephens has given a strong opinion to the contrary."[3] Notwithstanding this "strong opinion," however, Mr. Brooke states elsewhere unhesitatingly, "Under the Act of 1840, the bishop might stop proceedings *in limine*." He refers to the same cases, specifying Mr. Justice Wightman's observations in the first cited case, and also the case of Sherwood *v.* Ray.[4]

[1] *Handybook of the Public Worship Regulation Act*, p. 49.
[2] *Eccles. Law*, p. 1320.
[3] June 13, 1871.
[4] *Handybook*, p. 8.

Mr. Stephens' "opinion," I presume, is the ground on which doubt has been thrown on the power given to the bishop under the Act of 1840, of quashing proceedings, as compared with the power given in the new Act. Mr. Brooke, meanwhile—explaining the provisions of the new Act in the spirit, undoubtedly, of an *amicus curiæ*,[1] says, "He (the bishop) now retains this discretionary power, but qualified; inasmuch as, if he declines to send the case forward, he must put his reasons in writing, and they are to be filed in the diocesan registry" (p. 8). And when he goes on "to consider how that statutable privilege"—of the discretion "distinctly given to the Bishop"—"is likely to work," he says, "It is plain that, through the neutralising effect of one bishop's line of action on another, sooner or later every question of importance will be determined by *the judge*, and *the power to withhold any case from the operation of the law*—which," he observes, "was of the essence of the contention on behalf of the bishops' privileges"—"*for all practical purposes will be gone for ever*" (pp. 49–52).

If the two Acts are to be compared with each other,—and it will be borne in mind that it is expressly declared by the new Act, that "nothing in this Act contained, save as herein expressly provided, shall be construed to affect or repeal any jurisdiction which may now be in force for the due administration of ecclesiastical law" (sec. 5),—it is simply right and just that the exact provisions of the earlier Act should be fully and clearly understood.

Again, the provision, under the new Act, for decision by the bishop, if both parties are willing to submit themselves to his judgment, is not new. As Mr. Brooke states it, "Under the Act of 1840, the accused clerk and the party complainant agreeing thereto, the bishop sat as arbitrator, and pronounced sen-

[1] Mr. Brooke's *Handybook of the Public Worship Regulation Act* (1874) was "meant not as a technical, but as a popular treatise, the object being to render the Act intelligible to the non-professional reader." He says, in his preface, "The great importance of the Public Worship Regulation Act, its close connection with the welfare of the national Church, and the interest which its anticipated operation has already excited, may seem to justify the attempt to throw light on its provisions."

tence without further proceedings. This right to exercise a consensual jurisdiction," he simply says, "is *preserved* under the Act of 1874" (p. 8). The difference, meanwhile, in the Act of 1840, is, that the bishop, if he hear the cause in person, must hear it with certain assessors; by the new Act he is to hear it "in such manner as he shall think fit." "This does not *preclude*," says Mr. Brooke, "the assistance of an assessor." But no such assessor is required.

Under the Act of 1840, according to Mr. Brooke's statement, "two courses were open—a longer and a shorter one." "The longer course," he says, "was the one usually followed"—including four hearings: the preliminary commission; the trial before the bishop; the appeal to the Provincial Court; and the final appeal to the Queen in Council. The shorter course enabled the bishop to dispense with the preliminary inquiry and the hearing before himself, and to send the case at once to the Provincial Court, from whence, as before, there would be the appeal to the Queen in Council. "This expeditious method," he says, "was rarely adopted." I apprehend it would be more correct to say that the longest course, as here described, was rarely, if ever, adopted. The hearing before the bishop was dispensed with; not the preliminary inquiry, in most cases, inasmuch as it was to be regarded generally as a protection to the accused.

The process of appeal under the Act of 1840 is altogether unlike that which is provided for in the new Act. "The Court of Final Appeal," says Mr. Brooke, "is to be approached by the simple procedure of a special case drawn up by the judge" (p. 9). "Unless both parties agree that the evidence shall be taken down by a shorthand writer, and that a special case shall not be stated, the judge shall state the facts proved before him in the form of a special case" (sec. 9); and "no fresh evidence shall be admitted upon appeal, except by the permission of the tribunal hearing the appeal" (sec. 12). It would seem, in fact, to be the *judge*, rather than the *defendant*, who appeals to the Final Court; drawing up his own case, and with no further evidence admissible.

It is expressly declared in the Act (sec. 5) as already quoted, that "nothing in this Act contained, save as herein expressly

provided, shall be construed to affect or repeal any jurisdiction which may now be in force for the due administration of ecclesiastical law." Proceedings under the Church Discipline Act (3 and 4 Vict. c. 86) are distinguished from proceedings under this Act (sec. 4); and proceedings cannot be taken under both (sec. 18). But it is impossible to conceive that prosecutors would do otherwise than choose the Act which is the more summary and speedy, and also the less costly; and the defendant does not appear to have any choice in the matter. As far as regards cases of ritual, the Act of 1840 would virtually, I apprehend, be—though not "repealed"—yet effectually superseded and abrogated.

With reference to the mode of appointment of the new judge, I have said that some of the provisions of the Act have regard to this first appointment simply; and that there is nothing, as I understand, to prevent a successor being appointed, with powers conveyed directly, as in former instances, by the spiritual authority of the Archbishop.

The Act, it appears, provides for the appointment of a person "to be, during good behaviour, *a judge* of the Provincial Courts of Canterbury and York, hereinafter called the judge." It further provides, that "whensoever a vacancy shall occur in the office of official principal of the Arches Court of Canterbury, the judge shall become *ex officio* such official principal;" and in like manner in regard to the Chancery Court of York, and in regard to the office of the Master of the Faculties to the Archbishop of Canterbury. This clause, therefore, provides for a certain anticipated event—the vacancy, by resignation, of these offices; but it is evidently inapplicable to any future case, when these offices all become vacant together by the resignation, or death, of "the judge." The Act does not say that these offices shall all be from henceforth united *in perpetuum;* the provision made thereby, as I am informed, and as appears on the face of it, is for the particular case in which the new judge, already appointed by virtue of this Act, was to have right of succession to the other offices whensoever they should become vacant. It is to be hoped, therefore, that whenever a vacancy occurs in the office of Dean of the Arches and official

principal of the Archbishop of Canterbury, he will be duly appointed according to the ancient forms; since there will be no one into whose place he can succeed by virtue of the provisions of the Public Worship Regulation Act of 1874.

It is to be observed, that the Dean of the Arches occupies a peculiar and singular position in immediate connection with the Archbishop's office.

"As to the judge of the Court of Arches, Oughton says: 'Porro, ille officialis Archiepiscopi principalis *cum ipso archiepiscopo quoad jurisdictionem æquiparatur:* dicitur enim, *eandem esse dignitatem*, et idem auditorium officialis et episcopi; et, in foro judiciali, *parem* esse officialem archiepiscopi *ipsi archiepiscopo:* quodque officialis principalis habet *idem consistorium cum ipso archiepiscopo*, tam in eis quæ competunt archiepiscopo jure legati, quàm in his quæ competunt jure metropolitico: et nonnunquam, *episcoporum ordinarium* esse dicitur.'"[1]

In particular, "the judge of the Court of Arches has authority to deprive without the presence of the Bishop or Archbishop."[2] In this he is distinguished from every other ecclesiastical lay judge. In the well-known case of Mr. Stone, Lord Stowell (then Sir William Scott), as Judge of the Consistory Court of London, concluded his judgment in these terms: "I am under the painful necessity of considering Mr. Stone as having declined to revoke his error, and to comply with the requisition of the statute; and I must direct the Registrar to record that the party has not revoked his error. It is only necessary to observe further, that *by the Canons of the Church*[3] it is prescribed, that when sentence of deprivation is to be passed, which I must declare to have been incurred by this offence, it must be pronounced by the bishop.

"The Bishop of London [Bishop Porteus] was then introduced, attended by the Dean of St. Paul's, and two of the prebendaries; when, having taken the Judge's chair, he was informed by the Judge of the nature of the offence, and the proceedings instituted against Mr. Stone. The bishop then stated, that he had read the depositions, and was clearly satisfied

[1] T. i. *Proleg.* c. xi. s. 19; see PHILLIMORE's *Eccles. Law*, p. 1205.

[2] See Phillimore, p. 1399, and the authorities there cited.

[3] Canon 122.

that the offence was proved; and proceeded to read and sign the sentence of deprivation, which the Judge directed the Registrar to record."[1]

The language of the canon is, "No such sentence [as deprivation or deposition from the ministry] shall be pronounced by any person whosoever, but only by the bishop, with the assistance of his chancellor or dean (if they may conveniently be had), and some of the prebendaries, if the Court be kept near the cathedral church; or of the archdeacon, if he may be had conveniently, and two other at least grave ministers and preachers, to be called by the bishop, when the Court is kept in other places."

"Notwithstanding Canon 122, the Court of Arches has authority to deprive, without the presence of the Bishop or Archbishop. Burn, vol. ii. 146, quoting Burgoyne *v.* Free, 2 Hagg., 494." Mr. Brooke inserts this note, in illustration and support, as it would seem, of what he describes as penalties, under the recent Act, "culminating in *deprivation by a self-acting process*, once an inhibition order is issued by the judge. Hitherto," he says, "in the absence of very aggravating circumstances, the Ecclesiastical Courts have been inclined to *suspend* rather than to *deprive*. The severer penalty of deprivation has rarely been exacted. . . . A great change, however, has now been introduced. . . . Under this Act, . . . after three years, deprivation follows as a *natural and inevitable consequence*." "The penalties," he observes, "are sufficiently severe, and easy of application."[2] But the "self-acting process" would seem to be an entire novelty in ecclesiastical law. The extraordinary powers possessed by the Dean of Arches make it, it must be evident, a very important question in what precise relation any newly appointed judge, exercising these powers, stands, by virtue of the mode of his appointment, to the spiritual power or to the temporal.

I have referred, once more, in the foregoing Charge to the rule embodied in the Preface to the Book of Common Prayer, in regard to doubtful or disputed points in the rubrics. And I

[1] HAGGARD'S *Consistory Reports*, vol. i. pp. 433, 434.

[2] Brooke, pp. 65–67.

cannot refrain from saying, with respect to the case recently decided by the Judicial Committee,—that, looking at it from the point of view of Preface, which speaks with full synodical authority the mind of the Church of England,—that, supposing a person to have, himself, no "doubt," and to be never so confident of the correctness of his own interpretation of the Ornaments Rubric, he can scarcely refuse to recognise in the Report of the Judicial Committee, as well as in the conflicting legal opinions which have been given on the subject, the fact that the Rubric is "diversely taken," and therefore that it is a case in which the rule of the Church applies, of reference to the bishop. However the Ornaments Rubric be interpreted, there can be no doubt, assuredly, as to the meaning of the direction, or of the benefit and blessing to the Church which would follow on the faithful and dutiful observance of her Rule, in the mutual relations of her Bishops and Clergy.

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Mr. MARTEN, M.P., extenc
Cemeteries; those Act